

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
SOLVENCY OF INSURERS, PROPERTY AND CASUALTY
INSURANCE, OTHER TYPES OF INSURANCE COVERAGE,
AND UTILIZATION REVIEW AND INDEPENDENT REVIEW

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29	Sec. 401.001.	DEFINITIONS. In this subchapter:	
30	(1)	"Accountant" means an independent certified	
31		public accountant or accounting firm that meets the requirements of	
32		Section 401.011.	
33	(2)	"Affiliate" has the meaning assigned by Section	
34		823.003.	

(3) "Health maintenance organization" means a health maintenance organization authorized to engage in business in this state.

(4) "Insurer" means an insurer authorized to engage in business in this state, including:

(A) a life, health, or accident insurance company;

(B) a fire and marine insurance company;

(C) a general casualty company;

(D) a title insurance company;

(E) a fraternal benefit society;

(F) a mutual life insurance company;

(G) a local mutual aid association;

(H) a statewide mutual assessment company;

(I) a mutual insurance company other than a mutual life insurance company;

(J) a farm mutual insurance company;

(K) a county mutual insurance company;

(L) a Lloyd's plan;

(M) a reciprocal or interinsurance exchange;

(N) a group hospital service corporation;

(O) a stipulated premium company; and

(P) a nonprofit legal services corporation.

(5) "Subsidiary" has the meaning assigned by Section 823.003. (V.T.I.C. Art. 1.15A, Secs. 3(1), (2), (5), (6).)

Source Law

Sec. 3. In this article:

(1) "Accountant" means an independent certified public accountant or accounting firm that meets the requirements of Section 12 of this article.

(2) "Affiliate" has the meaning assigned by Subsection (a) of Section 2 of Article 21.49-1 of this code.

(5) "Insurer" means an insurer authorized to do business under the law of this state and includes life, health, and accident insurance companies, fire and marine companies, general casualty companies, title insurance companies, fraternal benefit societies, mutual life insurance companies, local mutual aid associations, statewide mutual assessment

1 companies, mutual insurance companies other than life,
2 farm mutual insurance companies, county mutual
3 insurance companies, Lloyd's plans, reciprocal and
4 interinsurance exchanges, group hospital service
5 corporations, health maintenance organizations,
6 stipulated premium insurance companies, and nonprofit
7 legal services corporations.

8 (6) "Subsidiary" has the meaning assigned
9 by Section 2 of Article 21.49-1 of this code.

10 Revisor's Note

11 (1) Section 3(5), V.T.I.C. Article 1.15A,
12 defines "insurer" to mean an insurer authorized to do
13 business under the law of this state, including
14 certain listed entities. For accuracy, the revised
15 law omits "health maintenance organizations" from the
16 listed entities and substitutes a separate definition
17 of that term because a "health maintenance
18 organization" is not a traditional insurer.
19 Throughout this subchapter the revised law substitutes
20 "insurer or health maintenance organization" for
21 "insurer."

22 (2) Section 3(3), V.T.I.C. Article 1.15A,
23 defines "board" as the State Board of Insurance.
24 Chapter 685, Acts of the 73rd Legislature, Regular
25 Session, 1993, abolished the State Board of Insurance
26 and transferred the board's functions to the
27 commissioner of insurance and the Texas Department of
28 Insurance. Throughout this chapter, references to the
29 board have been changed appropriately. For this
30 reason, the revised law omits the definition of
31 "board." The omitted law reads:

32 (3) "Board" means the State
33 Board of Insurance.

34 (3) Section 3(4), V.T.I.C. Article 1.15A,
35 defines "commissioner" to mean the commissioner of
36 insurance. The revised law omits the definition as
37 unnecessary because Section 31.001 of this code
38 defines "commissioner" to mean the commissioner of
39 insurance for purposes of this code and other

1 insurance laws of this state. The omitted law reads:

2 (4) "Commissioner" means the
3 commissioner of insurance.

4 Revised Law

5 Sec. 401.002. PURPOSE OF SUBCHAPTER. The purpose of this
6 subchapter is to require an annual audit by an independent
7 certified public accountant of the financial statements reporting
8 the financial condition and the results of operations of each
9 insurer or health maintenance organization. (V.T.I.C. Art. 1.15A,
10 Sec. 1.)

11 Source Law

12 Art. 1.15A
13 Sec. 1. The purpose of this article is to
14 require an annual examination by an independent
15 certified public accountant of the financial
16 statements reporting the financial condition and the
17 results of operations of each insurer.

18 Revisor's Note

19 Section 1, V.T.I.C. Article 1.15A, refers to an
20 annual "examination" by an independent certified
21 public accountant. Throughout this subchapter, the
22 revised law substitutes "audit" for "examination" in
23 relation to the activities of a certified public
24 accountant because that is the activity that an
25 accountant is required to perform under this
26 subchapter. The revised law retains "examination" in
27 relation to an activity performed by the Texas
28 Department of Insurance.

29 Revised Law

30 Sec. 401.003. EFFECT OF SUBCHAPTER ON AUTHORITY TO EXAMINE.
31 This subchapter does not limit the commissioner's authority to
32 order or the department's authority to conduct an examination of an
33 insurer or health maintenance organization under this code or the
34 commissioner's rules. (V.T.I.C. Art. 1.15A, Sec. 8.)

35 Source Law

36 Sec. 8. This article does not prohibit,
37 preclude, or limit the board from ordering,
38 conducting, or performing an examination of any

insurer under this code or the board's rules.

Revisor's Note

Section 8, V.T.I.C. Article 1.15A, states that the article does not "prohibit, preclude, or limit" the commissioner of insurance or the Texas Department of Insurance from "ordering, conducting, or performing an examination" of an insurer or health maintenance organization. The revised law omits the references to "prohibit" and "preclude" as unnecessary because they are included within the meaning of "limit." The revised law omits the reference to "performing" as unnecessary because it is included in the meaning of "conducting."

Revised Law

Sec. 401.004. FILING AND EXTENSIONS FOR FILING OF AUDITED FINANCIAL REPORT. (a) Unless exempt under Section 401.006, 401.007, or 401.008 and except as otherwise provided by Sections 401.005 and 401.016, an insurer or health maintenance organization shall:

(1) have an annual audit performed by an accountant; and

(2) file with the commissioner on or before June 30 an audited financial report for the preceding calendar year.

(b) The commissioner may require an insurer or health maintenance organization to file an audited financial report on a date that precedes June 30. The commissioner must notify the insurer or health maintenance organization of the filing date not later than the 90th day before that date.

(c) An insurer or health maintenance organization may request an extension of the filing date by submitting the request in writing before the 10th day preceding the filing date. The request must include sufficient detail for the commissioner to make an informed decision on the requested extension. The commissioner may extend the filing date for one or more 30-day periods if the

1 commissioner determines that there is good cause for the extension
2 based on a showing by the insurer or health maintenance
3 organization and the insurer's or health maintenance organization's
4 accountant of the reasons for requesting the extension. (V.T.I.C.
5 Art. 1.15A, Secs. 2, 9(a), (b), (c).)

6 Source Law

7 Sec. 2. This article applies to each insurer
8 except an insurer exempt under Section 4, 6, or 7 of
9 this article.

10 Sec. 9. (a) Each insurer shall have an annual
11 audit by an accountant and shall file an audited
12 financial report for the preceding calendar year with
13 the commissioner on or before June 30 of each year.

14 (b) Extension of the filing date for the audited
15 financial report may be granted by the commissioner
16 for 30-day periods on a showing by the insurer and its
17 accountant of reasons for requesting the extension and
18 determination by the commissioner of good cause for an
19 extension. The request for extension must be
20 submitted in writing before the 10th day preceding the
21 date the report is due to be filed and must include
22 sufficient detail to permit the commissioner to make
23 an informed decision with respect to the requested
24 extension.

25 (c) The commissioner may require an insurer to
26 file the audited financial report on a date before June
27 30 of a particular year if the commissioner notifies
28 the insurer of the date not later than the 90th day
29 before the date on which the report is to be filed.

30 Revisor's Note

31 Section 2, V.T.I.C. Article 1.15A, states that
32 the article applies to each insurer or health
33 maintenance organization except an entity exempt under
34 Sections 4, 6, or 7, revised as Sections 401.006,
35 401.007, and 401.008, respectively. Other sections of
36 V.T.I.C. Article 1.15A also provide alternatives for
37 those insurers or health maintenance organizations,
38 including Sections 10A and 13, revised as Sections
39 401.005 and 401.016, respectively. Therefore, the
40 revised law adds a reference to those sections for the
41 reader's convenience.

42 Revised Law

43 Sec. 401.005. ALTERNATIVE FILING FOR CANADIAN OR BRITISH
44 INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS. (a) Instead of the

1 audited financial report required by Section 401.004, an insurer or
2 health maintenance organization domiciled in Canada or the United
3 Kingdom may file the insurer's or health maintenance organization's
4 annual statement of total business on the form filed by the insurer
5 or health maintenance organization with the appropriate regulatory
6 authority in the country of domicile. The statement must be audited
7 by an independent accountant chartered in the country of domicile.

8 (b) The chartered accountant must be registered with the
9 commissioner under Section 401.014(a). The registration must be
10 accompanied by a statement, signed by the accountant, indicating
11 that the accountant is aware of the requirements of this subchapter
12 and affirming that the accountant will express the accountant's
13 opinion in conformity with those requirements. (V.T.I.C. Art.
14 1.15A, Sec. 10A.)

15 Source Law

16 Sec. 10A. (a) In lieu of the audited financial
17 report required under Section 9 of this article, an
18 insurer domiciled in Canada or the United Kingdom may
19 file its annual statement of total business on the form
20 filed by the company with the appropriate regulatory
21 authority in the country of domicile. The statement
22 must be audited by an independent accountant chartered
23 in the country of domicile.

24 (b) The chartered accountant shall register
25 with the commissioner under Section 11(a) of this
26 article, and the registration must be accompanied by a
27 statement, signed by the accountant, indicating that
28 the accountant is aware of the requirements of this
29 article and affirming that the accountant will express
30 the accountant's opinion in conformity with those
31 requirements.

32 Revised Law

33 Sec. 401.006. EXEMPTION FOR CERTAIN SMALL INSURERS AND
34 HEALTH MAINTENANCE ORGANIZATIONS. (a) An insurer or health
35 maintenance organization that has less than \$1 million in direct
36 premiums written in this state during a calendar year is exempt from
37 the requirement to file an audited financial report if the insurer
38 or health maintenance organization submits an affidavit, made under
39 oath by one of the insurer's or health maintenance organization's
40 officers, that specifies the amount of direct premiums written in
41 this state during that period.

1 (b) Notwithstanding Subsection (a), the commissioner may
2 require an insurer or health maintenance organization, other than a
3 fraternal benefit society that does not have any direct premiums
4 written in this state for accident and health insurance during a
5 calendar year, to comply with this subchapter if the commissioner
6 finds that the insurer's or health maintenance organization's
7 compliance is necessary for the commissioner to fulfill the
8 commissioner's statutory responsibilities.

9 (c) An insurer or health maintenance organization that has
10 assumed premiums of at least \$1 million under reinsurance
11 agreements is not exempt under Subsection (a). (V.T.I.C. Art.
12 1.15A, Sec. 4.)

13 Source Law

14 Sec. 4. (a) Except as provided by Subsections
15 (b) and (c) of this section, an insurer otherwise
16 subject to this article that has less than \$1 million
17 in direct premiums written in this state during a
18 calendar year, in lieu of the annual examination
19 required by this article for that calendar year, may
20 submit an affidavit under oath of an officer of the
21 insurer that specifies the amount of direct premiums
22 written in this state, and such insurer shall be exempt
23 from the audit required by this article.

24 (b) The commissioner may require an insurer that
25 is exempt under Subsection (a) of this section to
26 comply with this article if the commissioner finds
27 that the insurer's compliance is necessary for the
28 commissioner to fulfill the commissioner's statutory
29 responsibilities; provided that this subsection shall
30 not apply to any fraternal benefit society qualifying
31 for exemption under Subsection (a) of this section
32 which has no direct premiums written in this state for
33 accident and health insurance during a calendar year.

34 (c) An insurer that has assumed premiums of \$1
35 million or more under reinsurance agreements is not
36 exempt under Subsection (a) of this section.

37 Revised Law

38 Sec. 401.007. EXEMPTION FOR CERTAIN FOREIGN OR ALIEN
39 INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS. (a) A foreign or
40 alien insurer or health maintenance organization that files an
41 audited financial report in another state in accordance with that
42 state's requirements for audited financial reports may be exempt
43 from filing a report under this subchapter if the commissioner
44 finds that the other state's requirements are substantially similar
45 to the requirements prescribed by this subchapter.

1 (b) An insurer or health maintenance organization exempt
2 under this section shall file with the commissioner a copy of:

3 (1) the audited financial report, the report on
4 significant deficiencies in internal controls, and the
5 accountant's letter of qualifications filed with the other state;
6 and

7 (2) any notification of adverse financial conditions
8 report filed with the other state.

9 (c) The reports and letter required by Subsection (b)(1)
10 must be filed in accordance with the filing dates prescribed by
11 Sections 401.004 and 401.019. The report required by Subsection
12 (b)(2) must be filed in accordance with the filing date prescribed
13 by Section 401.017. (V.T.I.C. Art. 1.15A, Sec. 6.)

14 Source Law

15 Sec. 6. (a) A foreign or alien insurer that
16 files an audited financial report in another state,
17 pursuant to that state's requirement for audited
18 financial reports, may be exempt from filing a report
19 under this article if the commissioner finds that the
20 other state's requirements are substantially similar
21 to the requirements in this article.

22 (b) A copy of the audited financial report, the
23 report on significant deficiencies in internal
24 controls, and the accountant's letter of
25 qualifications filed with the other state must be
26 filed with the commissioner in accordance with the
27 filing dates provided by Sections 9 and 16 of this
28 article.

29 (c) A copy of a notification of adverse
30 financial conditions report filed with the other state
31 by a person exempt under this section must be filed
32 with the commissioner within the time provided by
33 Section 15 of this article.

34 Revised Law

35 Sec. 401.008. HARSHIP EXEMPTION. (a) An insurer or health
36 maintenance organization that is not eligible for an exemption
37 under Section 401.006 or 401.007 may apply to the commissioner for a
38 hardship exemption.

39 (b) Subject to Subsection (c), the commissioner may grant an
40 exemption under this section if the commissioner finds, after
41 reviewing the application, that compliance with this subchapter
42 would constitute a severe financial or organizational hardship for
43 the insurer or health maintenance organization. The commissioner

1 may grant the exemption at any time for one or more specified
2 periods.

3 (c) The commissioner may not grant an exemption under this
4 section if:

5 (1) the exemption would diminish the department's
6 ability to monitor the financial condition of the insurer or health
7 maintenance organization; or

8 (2) the insurer or health maintenance organization:

9 (A) during the five-year period preceding the
10 date the application for the exemption is made:

11 (i) has been placed under supervision,
12 conservatorship, or receivership;

13 (ii) has undergone a change in control, as
14 described by Section 823.005; or

15 (iii) has been subject to a significant
16 number of complaints, as determined by the commissioner;

17 (B) has been identified by the department as
18 troubled;

19 (C) has been or is the subject of a disciplinary
20 action by the department; or

21 (D) is not complying with the law or with a rule
22 adopted by the commissioner. (V.T.I.C. Art. 1.15A, Secs. 7(a),
23 (b), (c).)

24 Source Law

25 Sec. 7. (a) An insurer otherwise subject to
26 this article and not eligible for an exemption under
27 Section 4 or 6 of this article may apply to the
28 commissioner for a financial hardship exemption.

29 (b) Except as provided by Subsection (c) of this
30 section, the commissioner may grant an exemption under
31 this section if the commissioner finds, after review
32 of the application, that compliance with this rule
33 would constitute a severe financial or organizational
34 hardship on the insurer. An exemption may be granted
35 at any time and from time to time for a specified
36 period or periods.

37 (c) The commissioner may not grant an exemption
38 under this section if the exemption diminishes the
39 department's ability to monitor the financial
40 condition of the insurer and may not grant an exemption
41 to an insurer that:

42 (1) has been placed under supervision,
43 conservatorship, or receivership during the five-year

1 period immediately preceding the date on which
2 application for the exemption is made;

3 (2) has undergone a change in control, as
4 defined by Section 2, Article 21.49-1 of this code
5 during the five-year period immediately preceding the
6 date on which application for the exemption is made;

7 (3) has been identified by the department
8 as a troubled insurer;

9 (4) has been subject to a significant
10 number of complaints, as determined by the
11 commissioner, during the five-year period immediately
12 preceding the date on which application for the
13 exemption is made;

14 (5) has been or is the subject of a
15 disciplinary action by the board; or

16 (6) is not in compliance with any law or
17 any rule adopted by the board or commissioner.

18 Revisor's Note

19 (1) Section 7(b), V.T.I.C. Article 1.15A,
20 provides that the commissioner may grant an exemption
21 "at any time and from time to time." The revised law
22 omits the reference to "from time to time" because
23 "from time to time" is included within the meaning of
24 "at any time."

25 (2) Section 7(c), V.T.I.C. Article 1.15A,
26 refers to the five-year period "immediately preceding"
27 the date an application is made. Throughout this
28 chapter, the revised law omits "immediately" in this
29 context as unnecessary because "the period preceding"
30 means "the period immediately preceding."

31 (3) Section 7(c)(2), V.T.I.C. Article 1.15A,
32 refers to a change in "control, as defined by Section
33 2, Article 21.49-1 of this code." V.T.I.C. Article
34 21.49-1 was revised in Chapter 823 of this code. The
35 relevant section of Chapter 823 is Section 823.005,
36 which describes "control," and the revised law is
37 drafted accordingly.

38 (4) Section 7(d), V.T.I.C. Article 1.15A,
39 allows an appeal of a determination made under that
40 article to be taken under V.T.I.C. Article 1.04,
41 revised in 1999 as Subchapter D, Chapter 36, of this
42 code. The revised law omits the provision as redundant

1 because such a determination is already subject to
2 appeal in the manner provided by Subchapter D, Chapter
3 36, and an additional statement to that effect in this
4 chapter is unnecessary. The omitted law reads:

5 (d) An insurer that is aggrieved by a
6 determination of the commissioner under
7 this section may appeal that determination
8 under Article 1.04 of this code.

9 Revised Law

10 Sec. 401.009. CONTENTS OF AUDITED FINANCIAL REPORT. (a) An
11 audited financial report required under Section 401.004 must:

12 (1) describe the financial condition of the insurer or
13 health maintenance organization as of the end of the most recent
14 calendar year and the results of the insurer's or health
15 maintenance organization's operations, changes in financial
16 position, and changes in capital and surplus for that year;

17 (2) conform to the statutory accounting practices
18 prescribed or otherwise permitted by the insurance regulator in the
19 insurer's or health maintenance organization's state of domicile;
20 and

21 (3) include:

22 (A) the report of an accountant;

23 (B) a balance sheet that reports admitted assets,
24 liabilities, capital, and surplus;

25 (C) a statement of gain or loss from operations;

26 (D) a statement of cash flows;

27 (E) a statement of changes in capital and
28 surplus;

29 (F) any notes to financial statements;

30 (G) supplementary data and information,
31 including any additional data or information required by the
32 commissioner; and

33 (H) information required by the department to
34 conduct the insurer's or health maintenance organization's
35 examination under Subchapter B.

1 (b) The notes to financial statements required by
2 Subsection (a)(3)(F) must include:

3 (1) a reconciliation of any differences between the
4 audited statutory financial statements and the annual statements
5 filed under this code, with a written description of the nature of
6 those differences;

7 (2) any notes required by the appropriate National
8 Association of Insurance Commissioners annual statement
9 instructions or by generally accepted accounting principles; and

10 (3) a summary of the ownership of the insurer or health
11 maintenance organization and that entity's relationship to any
12 affiliated company.

13 (c) An insurer or health maintenance organization required
14 under Section 401.004 to file an audited financial report that does
15 not retain an independent certified public accountant to perform an
16 annual audit for the previous year may not be required to include in
17 the report audited statements of operations, cash flows, or changes
18 in capital and surplus for the first year. The insurer or health
19 maintenance organization must include those statements in the
20 first-year report and label the statements as unaudited. The
21 insurer or health maintenance organization must include in the
22 first-year report all other reports described by Section 401.004.

23 (d) The commissioner shall adopt rules governing the
24 information to be included in the audited financial report under
25 Subsection (a)(3)(H). (V.T.I.C. Art. 1.15A, Secs. 10(a), (b), (c),
26 (e), (f).)

27 Source Law

28 Sec. 10. (a) The audited financial report
29 shall report the financial condition of the insurer as
30 of the end of the most recent calendar year and the
31 results of the insurer's operations, changes in
32 financial position, and changes in capital and surplus
33 for that year in conformity with statutory accounting
34 practices prescribed or otherwise permitted by the
35 insurance regulator in the state of domicile.

36 (b) The audited financial report must include
37 the following:

- 38 (1) the report of an accountant;
39 (2) a balance sheet that reports admitted
40 assets, liabilities, capital, and surplus;

1 (3) a statement of gain or loss from
2 operations;
3 (4) a statement of cash flows;
4 (5) a statement of changes in capital and
5 surplus;
6 (6) any notes to financial statements; and
7 (7) supplementary data and information
8 including any additional data or information required
9 by the commissioner.

10 (c) The notes to the financial statements
11 required by Subdivision (6) of Subsection (b) of this
12 section must include:

13 (1) a reconciliation of differences, if
14 any, between the audited statutory financial
15 statements and the annual statements filed pursuant to
16 this code with a written description of the nature of
17 these differences;

18 (2) any notes required by the appropriate
19 National Association of Insurance Commissioners
20 annual statement instructions or by generally accepted
21 accounting principles; and

22 (3) a summary of the ownership of the
23 insurer and the relationship of the insurer to any
24 affiliated company.

25 (e) Insurers required to be examined under
26 Section 2 of this article who did not retain an
27 independent certified public accountant to perform an
28 annual examination for the previous year shall not be
29 required to include the following reports covered by
30 the accountant's opinion for the first year, although
31 such statements shall be presented and labeled
32 unaudited:

33 (1) Statement of operations.

34 (2) Statement of cash flows.

35 (3) Statements of changes in capital and
36 surplus.

37 All other reports described in Section 9 must be
38 included. For the succeeding year and each year
39 thereafter, such insurers shall file with the
40 commissioner all reports required by this article.

41 (f) The audited financial report must also
42 include information required by the department to
43 conduct the examination of the insurer under Article
44 1.15 of this code. The commissioner shall adopt rules
45 governing the information to be included in the report
46 under this subsection.

47 Revised Law

48 Sec. 401.010. REQUIREMENTS FOR FINANCIAL STATEMENTS IN
49 AUDITED FINANCIAL REPORT. (a) An accountant must audit the
50 financial reports provided by an insurer or health maintenance
51 organization for purposes of an audit under this subchapter. The
52 accountant who audits the reports must conduct the audit in
53 accordance with generally accepted auditing standards and must
54 consider other procedures described in the Financial Condition
55 Examiner's Handbook adopted by the National Association of
56 Insurance Commissioners.

1 (b) The financial statements included in the audited
2 financial report must be prepared in a form and using language and
3 groupings substantially the same as those of the relevant sections
4 of the insurer's or health maintenance organization's annual
5 statement filed with the commissioner. Beginning in the second
6 year in which an insurer or health maintenance organization is
7 required to file an audited financial report, the financial
8 statements must also be comparative, presenting the amounts as of
9 December 31 of the reported year and the amounts as of December 31
10 of the preceding year. (V.T.I.C. Art. 1.15A, Secs. 10(d), 14.)

11 Source Law

12 [Sec. 10]

13 (d) The financial statements included in the
14 audited financial report must be prepared in a form and
15 using language and groupings substantially the same as
16 the relevant sections of the insurer's annual
17 statement filed with the commissioner. Except in the
18 first year in which an insurer is required to file an
19 audited financial report, the financial statements
20 also must be comparative, presenting the amounts as of
21 December 31 of the reported year and the amounts as of
22 December 31 of the preceding year.

23 Sec. 14. (a) The financial reports furnished
24 under Section 8 of this article must be examined by an
25 accountant.

26 (b) The examination of an insurer's financial
27 reports shall be conducted in accordance with
28 generally accepted auditing standards. Consideration
29 should also be given to such other procedures
30 illustrated in the Examiner's Handbook promulgated by
31 the National Association of Insurance Commissioners.

32 Revisor's Note

33 (1) Section 14(a), V.T.I.C. Article 1.15A,
34 refers to "reports furnished under Section 8," revised
35 as Section 401.003 of this chapter. The revised law
36 omits the reference to Section 8 as misleading because
37 that section does not currently relate to reports or
38 audits, nor did it relate to reports or audits at the
39 time Section 14(a) was enacted.

40 (2) Section 14(b), V.T.I.C. Article 1.15A,
41 refers to the "Examiner's Handbook" adopted by the
42 National Association of Insurance Commissioners. The
43 correct name of the handbook is the "Financial

1 Condition Examiner's Handbook," and the revised law is
2 drafted accordingly.

3 Revised Law

4 Sec. 401.011. QUALIFICATIONS OF ACCOUNTANT; ACCEPTANCE OF
5 AUDITED FINANCIAL REPORT. (a) Except as provided by Subsections
6 (c) and (d), the commissioner shall accept an audited financial
7 report from an independent certified public accountant or
8 accounting firm that:

9 (1) is a member in good standing of the American
10 Institute of Certified Public Accountants and is in good standing
11 with all states in which the accountant or firm is licensed to
12 practice, as applicable; and

13 (2) conforms to the American Institute of Certified
14 Public Accountants Code of Professional Conduct and to the rules of
15 professional conduct and other rules of the Texas State Board of
16 Public Accountancy or a similar code.

17 (b) If the insurer or health maintenance organization is
18 domiciled in Canada, the commissioner shall accept an audited
19 financial report from an accountant chartered in Canada. If the
20 insurer or health maintenance organization is domiciled in Great
21 Britain, the commissioner shall accept an audited financial report
22 from an accountant chartered in Great Britain.

23 (c) A partner or other person responsible for rendering a
24 report for an insurer or health maintenance organization for seven
25 consecutive years may not, during the two-year period after that
26 seventh year, render a report for the insurer or health maintenance
27 organization or for a subsidiary or affiliate of the insurer or
28 health maintenance organization that is engaged in the business of
29 insurance. The commissioner may determine that the limitation
30 provided by this subsection does not apply to an accountant for a
31 particular insurer or health maintenance organization if the
32 insurer or health maintenance organization demonstrates to the
33 satisfaction of the commissioner that the limitation's application
34 to the insurer or health maintenance organization would be unfair

1 because of unusual circumstances. In making the determination, the
2 commissioner may consider:

3 (1) the number of partners or individuals the
4 accountant employs, the expertise of the partners or individuals
5 the accountant employs, or the number of the accountant's insurance
6 clients;

7 (2) the premium volume of the insurer or health
8 maintenance organization; and

9 (3) the number of jurisdictions in which the insurer
10 or health maintenance organization engages in business.

11 (d) The commissioner may not accept an audited financial
12 report prepared wholly or partly by an individual who the
13 commissioner finds:

14 (1) has been convicted of fraud, bribery, a violation
15 of the Racketeer Influenced and Corrupt Organizations Act (18
16 U.S.C. Section 1961 et seq.), or a state or federal criminal offense
17 involving dishonest conduct;

18 (2) has violated the insurance laws of this state with
19 respect to a report filed under this subchapter; or

20 (3) has demonstrated a pattern or practice of failing
21 to detect or disclose material information in reports filed under
22 this subchapter. (V.T.I.C. Art. 1.15A, Secs. 12(a), (b), (c).)

23 Source Law

24 Sec. 12. (a) Except as provided by Subsections
25 (b) and (c) of this section, the commissioner shall
26 accept an audited financial report from an accountant
27 who is an independent certified public accountant in
28 good standing with the American Institute of Certified
29 Public Accountants and in all states in which the
30 accountant or firm is licensed to practice and who
31 conforms to the Code of Professional Ethics of the
32 American Institute of Certified Public Accountants and
33 to the rules and regulations and Code of Ethics and
34 Rules of Professional Conduct of the Texas State Board
35 of Public Accountancy or a similar code. In the case
36 of an insurer domiciled in Canada, the commissioner
37 shall accept an audited financial report from an
38 accountant chartered in Canada, and, in the case of an
39 insurer domiciled in Great Britain, the commissioner
40 shall accept an audited financial report from an
41 accountant chartered in Great Britain.

42 (b) A partner or other person responsible for
43 rendering a report for an insurer for seven
44 consecutive years may not render a report for that

1 insurer, or any of the subsidiaries or affiliates of
2 the insurer that are engaged in the business of
3 insurance, during the two years following the seventh
4 year. The commissioner may determine that the
5 limitation in this subsection does not apply to the
6 accountant for a particular insurer if the insurer
7 demonstrates, to the satisfaction of the commissioner,
8 that its application to the insurer would be unfair
9 because of unusual circumstances. In making the
10 determination, the commissioner may consider:

11 (1) the number of partners or individuals
12 employed by the accountant, the expertise of the
13 partners or individuals employed by the accountant, or
14 the number of insurance clients of the accountant;

15 (2) the premium volume of the insurer; and

16 (3) the number of jurisdictions in which
17 the insurer transacts business.

18 (c) The commissioner may not accept an audited
19 financial report prepared in whole or in part by an
20 individual who the commissioner finds:

21 (1) has been convicted of fraud, bribery,
22 a violation of the Racketeer Influenced and Corrupt
23 Organizations Act (18 U.S.C. Sections 1961 through
24 1968), or any state or federal criminal offense
25 involving dishonest conduct;

26 (2) has violated the insurance laws of
27 this state with respect to any report filed under this
28 article; or

29 (3) has demonstrated a pattern or practice
30 of failing to detect or disclose material information
31 in reports filed under this article.

32 Revisor's Note

33 (1) Section 12(a), V.T.I.C. Article 1.15A,
34 refers to the "Code of Professional Ethics" of the
35 American Institute of Certified Public Accountants.
36 The revised law substitutes a reference to the "Code of
37 Professional Conduct" for the reference to the "Code
38 of Professional Ethics" because that is the accurate
39 name of that institute's code.

40 (2) Section 12(a), V.T.I.C. Article 1.15A,
41 refers to the "Code of Ethics and Rules of Professional
42 Conduct of the Texas State Board of Public
43 Accountancy." The Texas State Board of Public
44 Accountancy does not have a code of ethics. The ethics
45 provisions applicable to accountants and accounting
46 firms are contained in that board's rules of
47 professional conduct. For that reason the revised law
48 omits the reference to the code of ethics.

Revised Law

Sec. 401.012. HEARING ON ACCOUNTANT QUALIFICATIONS; REPLACEMENT OF ACCOUNTANT. The commissioner may hold a hearing to determine if an accountant is qualified and independent. If, after considering the evidence presented, the commissioner determines that an accountant is not qualified and independent for purposes of expressing an opinion on the financial statements in an audited financial report filed under this subchapter, the commissioner shall issue an order directing the insurer or health maintenance organization to replace the accountant with a qualified and independent accountant. (V.T.I.C. Art. 1.15A, Secs. 12(d), (e).)

Source Law

(d) The commissioner may hold a hearing to determine if an accountant is qualified and independent and, considering the evidence presented, may rule that the accountant is not qualified and independent for purposes of expressing an opinion on the financial statements in the audited financial report filed under this article.

(e) If the commissioner rules that an accountant is not qualified and independent, the commissioner shall issue an order directing the insurer to replace the accountant with a qualified and independent accountant.

Revised Law

Sec. 401.013. ACCOUNTANT'S LETTER OF QUALIFICATIONS. (a)
The audited financial report required under Section 401.004 must be
accompanied by a letter provided by the accountant who performed
the audit stating:

(1) the accountant's general background and experience;

(2) the experience of each individual assigned to prepare the audit in auditing insurers or health maintenance organizations and whether the individual is an independent certified public accountant; and

(3) that the accountant:

(A) is properly licensed by an appropriate state licensing authority, is a member in good standing of the American Institute of Certified Public Accountants, and is otherwise

1 qualified under Section 401.011;

2 (B) is independent from the insurer or health
3 maintenance organization and conforms to the standards of the
4 profession contained in the American Institute of Certified Public
5 Accountants Code of Professional Conduct, the statements of that
6 institute, and the rules of professional conduct adopted by the
7 Texas State Board of Public Accountancy, or a similar code;

8 (C) understands that:

9 (i) the audited financial report and the
10 accountant's opinion on the report will be filed in compliance with
11 this subchapter; and

12 (ii) the commissioner will rely on the
13 report and opinion in monitoring and regulating the insurer's or
14 health maintenance organization's financial position; and

15 (D) consents to the requirements of Section
16 401.020 and agrees to make the accountant's work papers available
17 for review by the department or the department's designee.

18 (b) Subsection (a)(2) does not prohibit an accountant from
19 using any staff the accountant considers appropriate if use of that
20 staff is consistent with generally accepted auditing standards.
21 (V.T.I.C. Art. 1.15A, Sec. 16A.)

22 Source Law

23 Sec. 16A. (a) The audited financial report must
24 be accompanied by a letter furnished by the accountant
25 stating:

26 (1) that the accountant is independent
27 with respect to the insurer and conforms to the
28 standards of the profession contained in the Code of
29 Professional Ethics, the statements of the American
30 Institute of Certified Public Accountants, and the
31 Rules of Professional Conduct of the Texas Board of
32 Public Accountancy, or a similar code;

33 (2) the background and experience of the
34 accountant in general, the experience in audits of
35 insurers of each individual assigned to prepare the
36 audit, and whether the individual is an independent
37 certified public accountant;

38 (3) that the accountant understands that
39 the annual audited financial report and the
40 accountant's opinion on the report will be filed in
41 compliance with this article and that the commissioner
42 will rely on the report and opinion in the monitoring
43 and regulation of the financial position of insurers;

44 (4) that the accountant consents to the
45 requirements of Section 17 of this article and that the

1 accountant agrees to make the accountant's work papers
2 available for review by the commissioner or the
3 commissioner's designee;

4 (5) that the accountant is properly
5 licensed by an appropriate state licensing authority
6 and is a member in good standing in the American
7 Institute of Certified Public Accountants; and

8 (6) that the accountant is in compliance
9 with the requirements of Section 12 of this article.

10 (b) Subsection (a)(2) of this section does not
11 prohibit an accountant from using any staff the
12 accountant considers appropriate if use of that staff
13 is consistent with the generally accepted auditing
14 standards.

15 Revisor's Note

16 (1) Section 16A(a)(1), V.T.I.C. Article 1.15A,
17 refers to the "Code of Professional Ethics" and the
18 statements of the American Institute of Certified
19 Public Accountants. The revised law substitutes a
20 reference to the "Code of Professional Conduct" for
21 the reference to the "Code of Professional Ethics" for
22 the reason stated in Revisor's Note (1) to Section
23 401.011 of this code.

24 (2) Section 16A(a)(4), V.T.I.C. Article 1.15A,
25 requires an accountant to make the accountant's work
26 papers available for review by the "commissioner or
27 the commissioner's designee." The revised law
28 substitutes a reference to the Texas Department of
29 Insurance because other provisions, including Section
30 17, V.T.I.C. Article 1.15A, revised in this chapter as
31 Section 401.020, and Section 8, V.T.I.C. Article 1.15,
32 revised in this chapter as Section 401.057, authorize
33 the department to examine work papers.

34 Revised Law

35 Sec. 401.014. REGISTRATION OF ACCOUNTANT. (a) Not later
36 than December 31 of the calendar year to be covered by an audited
37 financial report required by this subchapter, an insurer or health
38 maintenance organization must register in writing with the
39 commissioner the name and address of the accountant retained to
40 prepare the report.

41 (b) The insurer or health maintenance organization must

1 include with the registration a statement signed by the accountant:

2 (1) indicating that the accountant is aware of the
3 requirements of this subchapter and of the rules of the insurance
4 department of the insurer's or health maintenance organization's
5 state of domicile that relate to accounting and financial matters;
6 and

7 (2) affirming that the accountant will express the
8 accountant's opinion on the financial statements in terms of the
9 statements' conformity to the statutory accounting practices
10 prescribed or otherwise permitted by the insurance department
11 described by Subdivision (1) and specifying any exceptions the
12 accountant believes are appropriate.

13 (c) The commissioner may not accept an audited financial
14 report prepared by an accountant who is not registered under this
15 section.

16 (d) The commissioner may not accept the registration of a
17 person who does not qualify under Section 401.011 or does not comply
18 with the other requirements of this subchapter. (V.T.I.C. Art.
19 1.15A, Sec. 11.)

20 Source Law

21 Sec. 11. (a) Each insurer must register with
22 the commissioner the name and address of the
23 accountant retained to prepare an audited financial
24 report required by this article. The registration
25 must be made in writing not later than December 31 of
26 the calendar year to be covered by the audited
27 financial report.

28 (b) The registration must be accompanied by a
29 statement signed by the accountant indicating that the
30 accountant is aware of the requirements of this
31 article, and of the rules and regulations of the
32 insurance department of the insurer's state of
33 domicile that relate to accounting and financial
34 matters and affirming that the accountant will express
35 the accountant's opinion on the financial statements
36 in terms of their conformity to the statutory
37 accounting practices prescribed or otherwise
38 permitted by that department, specifying any
39 exceptions the accountant believes are appropriate.

40 (c) The commissioner may not accept an audited
41 financial report from an insurer that is prepared by an
42 accountant that is not registered under this section.

43 (d) The commissioner may not accept
44 registration under this section for a person who does
45 not comply with Section 12 of this article and with the
46 other requirements of this article.

1 (c) The statement required by Subsection (b) must include a
2 description of disagreements that were resolved to the accountant's
3 satisfaction and those that were not resolved to the accountant's
4 satisfaction.

5 (d) The insurer or health maintenance organization shall
6 file with the statement required by Subsection (b) a letter signed
7 by the accountant stating whether the accountant agrees with the
8 insurer's or health maintenance organization's statement and, if
9 not, the reasons why the accountant does not agree. If the
10 accountant fails to provide the letter, the insurer or health
11 maintenance organization shall file with the commissioner a copy of
12 a written request to the accountant for the letter. (V.T.I.C. Art.
13 1.15A, Sec. 12A.)

14 Source Law

15 Sec. 12A. (a) If the accountant who signed an
16 audited financial report resigns as accountant for the
17 insurer or is dismissed by the insurer after the report
18 is filed, the insurer shall notify the department not
19 later than the fifth business day after the date of
20 resignation or dismissal.

21 (b) Not later than the 10th business day after
22 the insurer gives the notification required by
23 Subsection (a) of this section, the insurer shall file
24 a written statement with the commissioner advising the
25 commissioner of any disagreements between the
26 accountant and personnel of the insurer responsible
27 for presentation of its financial statements relating
28 to accounting principles or practices, financial
29 statement disclosure, or auditing scope or procedures
30 that occurred during the 24-month period immediately
31 preceding the date of resignation or dismissal and
32 that, if not resolved to the satisfaction of the
33 accountant, would have caused the accountant to note
34 the disagreement in connection with the audited
35 financial report. The statement must include both
36 disagreements that were resolved to the accountant's
37 satisfaction and those that were not resolved to the
38 accountant's satisfaction.

39 (c) The insurer shall file with the statement
40 required under Subsection (b) of this section a letter
41 signed by the accountant stating whether the
42 accountant agrees with the insurer's statement and, if
43 not, stating the reasons why the accountant does not
44 agree. If the accountant is unwilling or unable to
45 provide the letter, the insurer shall file with the
46 commissioner a copy of a written request to the
47 accountant for the letter.

48 Revised Law

49 Sec. 401.016. AUDITED COMBINED OR CONSOLIDATED FINANCIAL
50 STATEMENTS. (a) An insurer or health maintenance organization

1 described by Section 401.001(3) or (4) that is required to file an
2 audited financial report under this subchapter may apply in writing
3 to the commissioner for approval to file audited combined or
4 consolidated financial statements instead of separate audited
5 financial reports if the insurer or health maintenance
6 organization:

7 (1) is part of a group of insurers or health
8 maintenance organizations that uses a pooling arrangement or 100
9 percent reinsurance agreement that affects the solvency and
10 integrity of the insurer's or health maintenance organization's
11 reserves; and

12 (2) cedes all of the insurer's or health maintenance
13 organization's direct and assumed business to the pool.

14 (b) An insurer or health maintenance organization must file
15 an application under Subsection (a) not later than December 31 of
16 the calendar year for which the audited combined or consolidated
17 financial statements are to be filed.

18 (c) An insurer or health maintenance organization that
19 receives approval from the commissioner under this section shall
20 file a columnar combining or consolidating worksheet for the
21 audited combined or consolidated financial statements that
22 includes:

23 (1) the amounts shown on the audited combined or
24 consolidated financial statements;

25 (2) the amounts for each insurer or health maintenance
26 organization stated separately;

27 (3) the noninsurance operations shown on a combined or
28 individual basis;

29 (4) explanations of consolidating and eliminating
30 entries; and

31 (5) a reconciliation of any differences between the
32 amounts shown in the individual insurer or health maintenance
33 organization columns of the worksheet and comparable amounts shown
34 on the insurer's or health maintenance organization's annual

1 statements.

2 (d) An insurer or health maintenance organization that does
3 not receive approval from the commissioner to file audited combined
4 or consolidated financial statements for the insurer or health
5 maintenance organization and any of the insurer's or health
6 maintenance organization's subsidiaries or affiliates shall file a
7 separate audited financial report. (V.T.I.C. Art. 1.15A, Sec. 13.)

8 Source Law

9 Sec. 13. (a) An insurer may make written
10 application to the commissioner for approval to file
11 audited combined or consolidated financial statements
12 instead of separate annual audited financial reports
13 if the insurer is part of a group of insurance
14 companies that uses a pooling or 100 percent
15 reinsurance agreement that affects the solvency and
16 integrity of the insurer's reserves and the insurer
17 cedes all of its direct and assumed business to the
18 pool. The application for approval must be filed on or
19 before December 31 of the calendar year for which the
20 combined or consolidated audited financial statements
21 are to be filed.

22 (b) An insurer that receives approval from the
23 commissioner under Subsection (a) of this section
24 shall file a columnar consolidating or combining
25 worksheet for consolidated or combined financial
26 statements that must include the following:

27 (1) amounts shown on the consolidated or
28 combined audited financial statements;

29 (2) amounts for each insurer stated
30 separately;

31 (3) noninsurance operations shown on a
32 combined or individual basis;

33 (4) explanations of consolidating and
34 eliminating entries; and

35 (5) reconciliation of any differences
36 between the amounts shown in the individual insurer
37 columns of the worksheet and comparable amounts shown
38 on the insurers' annual statements.

39 (c) An insurer who does not receive approval
40 from the commissioner to file an audited combined or
41 consolidated financial statements for the insurer and
42 any of its subsidiaries or affiliates shall file a
43 separate audited financial report.

44 Revised Law

45 Sec. 401.017. NOTICE OF ADVERSE FINANCIAL CONDITION OR
46 MISSTATEMENT OF FINANCIAL CONDITION. (a) An insurer or health
47 maintenance organization required to file an audited financial
48 report under this subchapter shall require the insurer's or health
49 maintenance organization's accountant to immediately notify the
50 board of directors of the insurer or health maintenance
51 organization or the insurer's or health maintenance organization's

1 audit committee in writing of any determination by that accountant
2 that:

3 (1) the insurer or health maintenance organization has
4 materially misstated the insurer's or health maintenance
5 organization's financial condition as reported to the commissioner
6 as of the balance sheet date being audited; or

7 (2) the insurer or health maintenance organization
8 does not meet the minimum capital and surplus requirements
9 prescribed by this code for the insurer or health maintenance
10 organization as of that date.

11 (b) An insurer or health maintenance organization that
12 receives a notice described by Subsection (a) shall:

13 (1) provide to the commissioner a copy of the notice
14 not later than the fifth business day after the date the insurer or
15 health maintenance organization receives the notice; and

16 (2) provide to the accountant evidence that the notice
17 was provided to the commissioner.

18 (c) If the accountant does not receive the evidence required
19 by Subsection (b)(2) on or before the fifth business day after the
20 date the accountant notified the insurer or health maintenance
21 organization under Subsection (a), the accountant shall file with
22 the commissioner a copy of the accountant's written notice not
23 later than the 10th business day after the date the accountant
24 notified the insurer or health maintenance organization.

25 (d) An accountant is not liable to an insurer or health
26 maintenance organization or the insurer's or health maintenance
27 organization's policyholders, shareholders, officers, employees,
28 directors, creditors, or affiliates for a statement made under this
29 section if the statement was made in good faith to comply with this
30 section. (V.T.I.C. Art. 1.15A, Secs. 15(a), (b), (d).)

31 Source Law

32 Sec. 15. (a) An insurer required to furnish an
33 audited financial report shall require the accountant
34 to immediately notify in writing the board of
35 directors of the insurer or its audit committee of a
36 determination by that accountant that:

1 (1) the insurer has materially misstated
2 its financial condition as reported to the
3 commissioner as of the balance sheet date currently
4 under examination; or

5 (2) the insurer does not meet the minimum
6 capital and surplus requirements provided by this code
7 for that insurer as of that date.

8 (b) The insurer shall furnish to the
9 commissioner a copy of the accountant's written notice
10 not later than the fifth business day after the date on
11 which the insurer receives the notice from the
12 accountant and shall provide the accountant with
13 evidence that the notice has been furnished to the
14 commissioner. If the accountant does not receive the
15 evidence on or before the fifth business day after the
16 date on which the accountant notified the insurer, the
17 accountant shall, not later than the 10th business day
18 after the date on which the accountant notified the
19 insurer, file a copy of the written notice with the
20 commissioner.

21 (d) An accountant is not liable to the insurer,
22 its policyholders, shareholders, officers, employees
23 or directors, creditors or affiliates, for any
24 statement made under Subsections (a) and (b) of this
25 section if the statement was made in good faith to
26 comply with those subsections.

27 Revised Law

28 Sec. 401.018. INFORMATION DISCOVERED AFTER DATE OF AUDITED
29 FINANCIAL REPORT. If, after the date of an audited financial report
30 filed under this subchapter, the accountant becomes aware of facts
31 that might have affected the report, the accountant must take
32 action as prescribed in Volume 1, AU Section 561, Professional
33 Standards of the American Institute of Certified Public
34 Accountants. (V.T.I.C. Art. 1.15A, Sec. 15(c).)

35 Source Law

36 (c) If the accountant, subsequent to the date of
37 the audited financial report filed under this article,
38 becomes aware of facts that might have affected the
39 report, the accountant must take action as prescribed
40 in Volume 1, Section AU 561, Professional Standards of
41 the American Institute of Certified Public
42 Accountants.

43 Revised Law

44 Sec. 401.019. REPORT ON SIGNIFICANT DEFICIENCIES IN
45 INTERNAL CONTROL. (a) In addition to the audited financial report
46 required by this subchapter, each insurer or health maintenance
47 organization shall provide to the commissioner a written report of
48 significant deficiencies required and prepared by an accountant in
49 accordance with the Professional Standards of the American

1 Institute of Certified Public Accountants.

2 (b) The insurer or health maintenance organization shall
3 annually file with the commissioner the report required by this
4 section not later than the 60th day after the date the audited
5 financial report is filed. The insurer or health maintenance
6 organization shall also provide a description of remedial actions
7 taken or proposed to be taken to correct significant deficiencies,
8 if the actions are not described in the accountant's report.

9 (c) The report must follow generally the form for
10 communication of internal control structure matters noted in an
11 audit described in Statement on Auditing Standard (SAS) No. 60, AU
12 Section 325, Professional Standards of the American Institute of
13 Certified Public Accountants. (V.T.I.C. Art. 1.15A, Sec. 16.)

14 Source Law

15 Sec. 16. (a) In addition to the audited
16 financial report, each insurer shall furnish to the
17 commissioner the written report of significant
18 deficiencies required and prepared in accordance with
19 the Professional Standards of the American Institute
20 of Certified Public Accountants.

21 (b) The report required by this section must be
22 filed annually by the insurer with the commissioner
23 not later than the 60th day after the date the audited
24 financial report is filed. The insurer is also
25 required to provide a description of remedial actions
26 taken or proposed to correct significant deficiencies,
27 if the actions are not described in the accountant's
28 report.

29 (c) The report must follow generally the form
30 for communication of internal control structure
31 matters noted in an audit described in SAS No. 60,
32 Section AU 325, Professional Standards of the American
33 Institute of Certified Public Accountants.

34 Revised Law

35 Sec. 401.020. ACCOUNTANT WORK PAPERS. (a) In this
36 section, "work papers" means the records kept by an accountant of
37 the procedures followed, the tests performed, the information
38 obtained, and the conclusions reached that are pertinent to the
39 accountant's audit of an insurer's or health maintenance
40 organization's financial statements. The term includes work
41 programs, analyses, memoranda, letters of confirmation and
42 representation, abstracts of company documents and schedules, and
43 commentaries prepared or obtained by the accountant in the course

1 of auditing the financial statements that support the accountant's
2 opinion.

3 (b) An insurer or health maintenance organization required
4 to file an audited financial report under this subchapter shall
5 require the insurer's or health maintenance organization's
6 accountant to make available for review by the department's
7 examiners the work papers and any record of communications between
8 the accountant and the insurer or health maintenance organization
9 relating to the accountant's audit that were prepared in conducting
10 the audit. The insurer or health maintenance organization shall
11 require that the accountant retain the work papers and records of
12 communications until the earlier of:

13 (1) the date the department files a report on the
14 examination covering the audit period; or

15 (2) the seventh anniversary of the date of the last day
16 of the audit period.

17 (c) The department may copy and retain the copies of
18 pertinent work papers when the department's examiners conduct a
19 review under Subsection (b). The review is considered an
20 investigation, and work papers obtained during that investigation
21 may be made confidential by the commissioner, unless the work
22 papers are admitted as evidence in a hearing before a governmental
23 agency or in a court. (V.T.I.C. Art. 1.15A, Sec. 17.)

24 Source Law

25 Sec. 17. (a) Work papers are the records kept by
26 the accountant of the procedures followed, the tests
27 performed, the information obtained, and the
28 conclusions reached pertinent to the accountant's
29 examination of the financial statements of an insurer
30 and may include work programs, analyses, memoranda,
31 letters of confirmation and representation, abstracts
32 of company documents and schedules, or commentaries
33 prepared or obtained by the accountant in the course of
34 the accountant's examination of the financial
35 statements of an insurer that support the accountant's
36 opinion.

37 (b) Each insurer required to file an audited
38 financial report shall require the accountant to make
39 available for review by the department's examiners the
40 work papers and any record of communications related
41 to the audit between the accountant and the insurer
42 prepared in the conduct of the examination. The
43 insurer shall require that the accountant retain the

1 audit work papers and records of communications until
2 the department has filed a report on examination
3 covering the period of the audit, but not longer than
4 seven years after the period reported.

5 (c) In the conduct of the periodic review by the
6 department's examiners, photocopies of pertinent audit
7 work papers may be made and retained by the board.
8 Reviews by the department's examiners are considered
9 investigations, and all work papers obtained during
10 the course of those investigations may be made
11 confidential by the commissioner, unless admitted as
12 evidence in a hearing before a governmental agency or
13 in a court of competent jurisdiction.

14 Revisor's Note

15 Section 17(c), V.T.I.C. Article 1.15A, refers to
16 evidence admitted in a court "of competent
17 jurisdiction." The revised law omits the quoted
18 language because the general laws of civil
19 jurisdiction determine which courts have jurisdiction
20 over a matter. For example, see Sections
21 24.007-24.011, Government Code, for the general
22 jurisdiction of district courts.

23 Revised Law

24 Sec. 401.021. PENALTY FOR FAILURE TO COMPLY. (a) If an
25 insurer or health maintenance organization fails to comply with
26 this subchapter, the commissioner shall order that the insurer's or
27 health maintenance organization's annual audit be performed by a
28 qualified independent certified public accountant.

29 (b) The commissioner shall assess against the insurer or
30 health maintenance organization the cost of auditing the insurer's
31 or health maintenance organization's financial statement under
32 this section.

33 (c) The insurer or health maintenance organization shall
34 pay to the commissioner the amount of the assessment not later than
35 the 30th day after the date the commissioner issues the notice of
36 assessment to the insurer or health maintenance organization.

37 (d) Money collected under this section shall be deposited to
38 the credit of the Texas Department of Insurance operating account
39 for use by the commissioner and the department to pay the expenses
40 incurred under this subchapter. (V.T.I.C. Art. 1.15A, Sec. 9(d).)

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(d) If the insurer fails to comply with this article, the commissioner shall order the audit performed by an independent qualified certified public accountant and assess against the insurer the cost of auditing the insurer's financial statement under this article, and the insurer shall pay the amount of the assessment to the commissioner not later than the 30th day after the date the commissioner issues the notice of assessment to the insurer. Money collected under this section shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund for the use of the board and the department for the purpose of paying the expenses incurred under the article.

Revisor's Note

Section 9(d), V.T.I.C. Article 1.15A, refers to the "State Board of Insurance operating fund." Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. Throughout this chapter, the revised law is drafted accordingly.

[Sections 401.022-401.050 reserved for expansion]

SUBCHAPTER B. EXAMINATION OF CARRIERS

Revised Law

Sec. 401.051. DUTY TO EXAMINE CARRIERS. (a) The department or an examiner appointed by the department shall visit at the carrier's principal office:

(1) each carrier that is organized under the laws of this state; and

(2) each other carrier that is authorized to engage in business in this state.

(b) The department or an examiner appointed by the department may visit the carrier for the purpose of investigating the carrier's affairs and condition. The department or an examiner appointed by the department shall examine the carrier's financial condition and ability to meet the carrier's liabilities and

1 compliance with the laws of this state that affect the conduct of
2 the carrier's business.

3 (c) The department or an examiner appointed by the
4 department may conduct the visit and examination of a carrier
5 described by Subsection (a)(2) alone or with representatives of the
6 insurance supervising departments of other states. (V.T.I.C. Art.
7 1.15, Sec. 1 (part); Art. 1.19 (part).)

8 Source Law

9 Art. 1.15

10 Sec. 1. The State Board of Insurance shall . . .
11 in person or by one or more examiners commissioned by
12 such Board in writing, visit each carrier organized
13 under the laws of this state and examine its financial
14 condition and its ability to meet its liabilities, as
15 well as its compliance with the laws of Texas affecting
16 the conduct of its business; and such Board shall
17 similarly, in person or by one or more commissioned
18 examiners, visit and examine, either alone or jointly
19 with representatives of the insurance supervising
20 departments of other states, each insurance carrier
21 not organized under the laws of this state but
22 authorized to transact business in this state. . . .

23 Art. 1.19. The Board of Insurance Commissioners
24 for the purpose of examination authorized by law, has
25 power either in person or by one or more examiners by
26 it commissioned in writing:

27 . . .
28 3. To visit at its principal office,
29 wherever situated, any insurance company doing
30 business in this State, for the purpose of
31 investigating its affairs and conditions, and

32 Revisor's Note

33 (1) Section 1, V.T.I.C. Article 1.15, and
34 V.T.I.C. Article 1.19 state that the Texas Department
35 of Insurance may visit an insurance carrier in person
36 or by one or more examiners "commissioned" by the
37 department. The substance of Articles 1.15 and 1.19
38 was originally enacted by Sections 41 and 66, Chapter
39 108, Acts of the 31st Legislature, Regular Session,
40 1909, and included the references to "commissioned"
41 examiners. V.T.I.C. Article 1.04A, enacted by Chapter
42 1082, Acts of the 71st Legislature, Regular Session,
43 1989, and revised in this chapter in relevant part as
44 Section 401.101, provides that the department may use

1 a salaried department examiner or the services of any
2 qualified person or firm to examine an insurance
3 organization. Throughout this chapter, the revised
4 law omits references to the requirement that an
5 examiner be "commissioned" as impliedly repealed by
6 Article 1.04A, and substitutes references to an
7 examiner "appointed" by the department. However, the
8 revised law retains the references to a person being
9 "commissioned" in relation to instances in which the
10 department may decide to commission the person. See,
11 for example, Section 401.104 of this chapter.

12 (2) V.T.I.C. Article 1.15 and V.T.I.C. Article
13 1.19 contain substantially duplicative provisions
14 relating to examinations. V.T.I.C. Article 1.19
15 refers to the authority of the commissioner to visit an
16 "insurance company," whereas Section 1, V.T.I.C.
17 Article 1.15, refers to the commissioner's authority
18 to visit a "carrier." The revised law substitutes
19 "carrier" for the reference to "insurance company" for
20 consistency throughout this subchapter and because
21 "insurance company" is included within the meaning of
22 "carrier."

23 Revised Law

24 Sec. 401.052. FREQUENCY OF EXAMINATION. (a) The
25 department shall visit and examine a carrier:

26 (1) annually during the first three years after the
27 carrier is organized or incorporated; and

28 (2) except as provided by Subsection (b), once every
29 three years after the period described by Subdivision (1), or on a
30 more frequent basis as the department considers necessary.

31 (b) If the commissioner determines that the financial
32 strength of a carrier justifies less frequent examinations than
33 those required under Subsection (a)(2), the department may conduct
34 the examination at intervals not less frequent than every five

1 years. The commissioner shall adopt rules governing the
2 determination under this subsection of whether the financial
3 strength of a carrier justifies less frequent examinations.
4 (V.T.I.C. Art. 1.15, Secs. 1 (part), 10.)

5 Source Law

6 Sec. 1. The State Board of Insurance shall once
7 each year for the first three (3) years after
8 organization or incorporation, and thereafter once in
9 each three (3) years, or oftener, if the Board deems
10 necessary, . . . visit each carrier . . . and examine
11

12 Sec. 10. If the Commissioner determines that
13 the financial strength of a carrier justifies
14 less-frequent examinations than are required by
15 Section 1 of this article, the Commissioner may
16 conduct the examination of a carrier at intervals not
17 to exceed five years. The Commissioner shall adopt
18 rules governing the determination of whether the
19 financial strength of a carrier justifies examination
20 under this section. This section applies only to
21 examination of a carrier that has been incorporated or
22 organized for more than three years.

23 Revised Law

24 Sec. 401.053. EXAMINATION PERIOD. Unless the department
25 requests that an examination cover a longer period, the examination
26 must cover the period beginning on the last day covered by the most
27 recent examination and ending on December 31 of the year preceding
28 the year in which the examination is being conducted. (V.T.I.C.
29 Art. 1.04A (part).)

30 Source Law

31 Art. 1.04A. [In making examinations of any
32 insurance organization as provided by law,]
33 . . . Such examination shall cover the period of time
34 that the department requests. In the event the
35 department does not specify a longer period of time,
36 such examination shall be from the time of the last
37 examination theretofore made by the department to
38 December 31st of the year preceding the examination
39 then being made. . . .

40 Revised Law

41 Sec. 401.054. POWERS RELATED TO EXAMINATION. The
42 department or the examiner appointed by the department:

43 (1) has free access, and may require the carrier or the
44 carrier's agent to provide free access, to all books and papers of
45 the carrier or the carrier's agent that relate to the carrier's

1 business and affairs; and

2 (2) has the authority to summon and examine under
3 oath, if necessary, an officer, agent, or employee of the carrier or
4 any other person in relation to the carrier's affairs and
5 condition. (V.T.I.C. Art. 1.15, Sec. 1 (part); Art. 1.19 (part).)

6 Source Law

7 [Art. 1.15]

8 Sec. 1. . . . Such Board or its commissioned
9 examiners shall have free access to all the books and
10 papers of the carrier or agents thereof relating to the
11 business and affairs of such carrier, and shall have
12 power to summon and examine under oath, if necessary,
13 the officers, agents, and employees of such carrier
14 and any other person relative to the affairs of such
15 carrier. . . .

16 Art. 1.19. The Board of Insurance Commissioners
17 for the purpose of examination authorized by law, has
18 power . . . :

19 1. To require free access to all books and
20 papers within this State of any insurance companies,
21 or the agents thereof, doing business within this
22 State.

23 2. To summon and examine any person within
24 this State, under oath, which it or any examiner may
25 administer, relative to the affairs and conditions of
26 any insurance company.

27 . . .

28 Revisor's Note

29 V.T.I.C. Article 1.19 provides that the Texas
30 Department of Insurance may examine any person in this
31 state under oath and that the department or an
32 appointed examiner may administer the oath. The
33 revised law omits the reference to administering the
34 oath because the power to examine under oath includes
35 the power to administer the oath.

36 Revised Law

37 Sec. 401.055. EFFECT OF SUBCHAPTER ON AUTHORITY TO USE
38 INFORMATION. This subchapter does not limit the commissioner's
39 authority to use a final or preliminary examination report, an
40 examiner's or company's work papers or other documents, or any other
41 information discovered or developed during an examination in
42 connection with a legal or regulatory action that the commissioner,
43 in the commissioner's sole discretion, considers appropriate.

1 (V.T.I.C. Art. 1.15, Sec. 7.)

2 Source Law

3 Sec. 7. Nothing contained in this article shall
4 be construed to limit the Commissioner's authority to
5 use any final or preliminary examination report, any
6 examiner or company workpapers or other documents, or
7 any other information discovered or developed during
8 the course of any examination in the furtherance of any
9 legal or regulatory action which the Commissioner of
10 Insurance may, in his or her sole discretion deem
11 appropriate.

12 Revised Law

13 Sec. 401.056. RULES RELATED TO REPORTS AND HEARINGS. The
14 commissioner by rule shall adopt:

15 (1) procedures governing the filing and adoption of an
16 examination report;

17 (2) procedures governing a hearing to be held under
18 this subchapter; and

19 (3) guidelines governing an order issued under this
20 subchapter. (V.T.I.C. Art. 1.15, Sec. 6.)

21 Source Law

22 Sec. 6. The Board, by rule, shall adopt
23 procedures for filing and adoption of examination
24 reports and for hearings to be held under this article
25 and guidelines governing orders issued under this
26 article.

27 Revised Law

28 Sec. 401.057. USE OF AUDIT AND WORK PAPERS. (a) In this
29 section, "work papers" has the meaning assigned by Section
30 401.020(a).

31 (b) In conducting an examination under this subchapter, the
32 department shall use audits and work papers that the carrier makes
33 available to the department and that are prepared by an accountant
34 or accounting firm meeting the qualifications of Section 401.011.
35 The department may conduct a separate audit of the carrier if
36 necessary. Work papers developed in the audit shall be maintained
37 in the manner provided by Sections 401.020(b) and (c).

38 (c) The carrier shall provide the department with:

39 (1) the work papers of an accountant or accounting
40 firm or the carrier; and

1 (2) a record of any communications between the
2 accountant or accounting firm and the carrier that relate to an
3 audit.

4 (d) The accountant or accounting firm shall deliver the
5 information described by Subsection (c) to the examiner. The
6 examiner shall retain the information during the department's
7 examination of the carrier.

8 (e) Information obtained under this section is confidential
9 and may not be disclosed to the public except when introduced as
10 evidence in a hearing. (V.T.I.C. Art. 1.15, Sec. 8.)

11 Source Law

12 Sec. 8. (a) In conducting an examination under
13 this article, the department shall use audits and work
14 papers prepared by an accountant or accounting firm
15 that meets the requirements of Section 12, Article
16 1.15A, of this code that are made available to the
17 department by the carrier. If necessary, the
18 department may conduct a separate audit of the
19 carrier.

20 (b) The carrier shall provide the department
21 with the work papers of an accountant or accounting
22 firm or the carrier and a record of any communications
23 between the accountant or accounting firm and the
24 carrier that relate to the audit. The accountant or
25 accounting firm shall deliver that information to the
26 department's examiners, who shall retain the
27 information during the course of the department's
28 examination of the carrier. Information obtained
29 under this section is confidential and may not be
30 disclosed to the public except when introduced as
31 evidence in a hearing.

32 (c) For purposes of this section, "work papers"
33 has the meaning assigned by Section 17(a), Article
34 1.15A, of this code. Work papers developed in an audit
35 conducted under this section shall be maintained in
36 the manner provided by Sections 17(b) and (c), Article
37 1.15A, of this code.

38 Revised Law

39 Sec. 401.058. CONFIDENTIALITY OF REPORTS AND RELATED
40 INFORMATION. (a) A final or preliminary examination report and
41 any information obtained during an examination are confidential and
42 are not subject to disclosure under Chapter 552, Government Code.

43 (b) Subsection (a) applies if the examined carrier is under
44 supervision or conservatorship. Subsection (a) does not apply to
45 an examination conducted in connection with a liquidation or
46 receivership under this code or another insurance law of this

1 state. (V.T.I.C. Art. 1.15, Sec. 9.)

2 Source Law

3 Sec. 9. A final or preliminary examination
4 report, and any information obtained during the course
5 of an examination, is confidential and is not subject
6 to disclosure under the open records law, Chapter 424,
7 Acts of the 63rd Legislature, Regular Session, 1973
8 (Article 6252-17a, Vernon's Texas Civil Statutes), and
9 its subsequent amendments. This section applies if
10 the carrier examined is under supervision or
11 conservation but does not apply to an examination
12 conducted in connection with a liquidation or a
13 receivership under this code or another insurance law
14 of this state.

15 Revisor's Note

16 Section 9, V.T.I.C. Article 1.15, refers to the
17 "open records law, Chapter 424, Acts of the 63rd
18 Legislature, Regular Session, 1973 (Article 6252-17a,
19 Vernon's Texas Civil Statutes), and its subsequent
20 amendments." That statute was codified in 1993 as
21 Chapter 552, Government Code. The revised law is
22 drafted accordingly throughout this chapter.

23 In addition, throughout this chapter, the revised
24 law omits references to "its subsequent amendments"
25 because under Section 311.027, Government Code (Code
26 Construction Act), unless expressly provided
27 otherwise, a reference to a statute applies to all
28 reenactments, revisions, or amendments of the statute.

29 Revised Law

30 Sec. 401.059. DETERMINATION OF VALUE. In determining the
31 value or market value of an investment in or on real estate or an
32 improvement to real estate by a carrier authorized to engage in
33 business in this state, the department, in administering this code,
34 may consider any factor or matter that the department considers
35 proper and material, including:

36 (1) an appraisal by a real estate board or other
37 qualified person;

38 (2) an affidavit by another person familiar with those
39 values;

- 1 (3) a tax valuation;
- 2 (4) the cost of acquisition after deducting for
- 3 depreciation and obsolescence;
- 4 (5) the cost of replacement;
- 5 (6) sales of other comparable property;
- 6 (7) enhancement in value from any cause;
- 7 (8) income received or to be received; and
- 8 (9) any improvements made. (V.T.I.C. Art. 1.15, Sec.
- 9 2.)

10 Source Law

11 Sec. 2. The State Board of Insurance in
12 administering any provision of the Insurance Code,
13 Acts 1951, 51st Legislature, Chapter 491, shall be
14 authorized and empowered in determining "value" or
15 "market value" of any investment in or upon real estate
16 or the improvements thereon by any carrier authorized
17 to do business in the State of Texas to consider any
18 and all matters and things relating thereto, including
19 but not restricted to, appraisals by real estate
20 boards or other qualified persons, affidavits by other
21 persons familiar with such values, tax valuations,
22 cost of acquisition, with proper deductions for
23 depreciation and obsolescence, cost of replacement,
24 sales of other comparable property, enhancement in
25 value from whatever cause, income received or to be
26 received, improvements made or any other factor or any
27 other evidence which to said Board may be deemed proper
28 and material.

29 Revisor's Note

30 (1) Section 2, V.T.I.C. Article 1.15, refers to

31 "any provision of the Insurance Code, Acts 1951, 51st

32 Legislature, Chapter 491." The reference contains a

33 typographical error, and clearly should refer to

34 Chapter 491, Acts of the 52nd Legislature, 1951,

35 meaning the Insurance Code. For many years, a company

36 publishing the laws of the State of Texas has included

37 in published versions of the Insurance Code portions

38 of law that were never formally added to the Insurance

39 Code by the legislature. Those provisions have been

40 revised as part of the Insurance Code. However,

41 because those provisions cannot be interpreted to

42 authorize a determination of "value" or "market value"

1 of real property or improvements on real property as
2 contemplated by Section 2, V.T.I.C. Article 1.15, it
3 is appropriate in this context to substitute "this
4 code" for "the Insurance Code, Acts 1951, 51st
5 Legislature, Chapter 491." The revised law is drafted
6 accordingly.

7 (2) Section 2, V.T.I.C. Article 1.15, uses the
8 phrase "including but not restricted to." "[B]ut not
9 restricted to" is omitted from the revised law as
10 unnecessary because Section 311.005(13), Government
11 Code (Code Construction Act), and Section 312.011(19),
12 Government Code, provide that "includes" and
13 "including" are terms of enlargement and not of
14 limitation and do not create a presumption that
15 components not expressed are excluded.

16 Revised Law

17 Sec. 401.060. RIGHT TO INFORMATION RELATING TO
18 DETERMINATION OF VALUE OR MARKET VALUE. (a) If the department
19 determines the value or market value of an insurer's investment in
20 or on real estate or an improvement to real estate, the insurer is
21 entitled to make a written request for a written finding by the
22 commissioner in relation to that determination.

23 (b) Not later than the 10th day after the date the
24 commissioner receives a request under Subsection (a), the
25 commissioner shall enter a written order or finding that:

26 (1) states separately the department's findings on
27 each factor or matter on which the department relied in making the
28 determination; and

29 (2) includes the name and address of each person who
30 provided evidence relating to a factor or matter on which the
31 department relied in making the determination.

32 (c) The commissioner shall provide to the insurer that
33 requested a written finding under this section a copy of the finding
34 or order. (V.T.I.C. Art. 1.15, Sec. 3.)

1 codified as V.T.I.C. Article 1.19 by Chapter 491, Acts
2 of the 52nd Legislature, Regular Session, 1951. The
3 revised law omits the provision as impliedly repealed
4 by Section 5, V.T.I.C. Article 1.15, which was enacted
5 by Chapter 242, Acts of the 72nd Legislature, Regular
6 Session, 1991, and provides for disciplinary action
7 under Section 7, V.T.I.C. Article 1.10, revised as
8 Chapter 82 of this code, for an insurer's refusal to be
9 examined. The omitted law reads:

10 3. . . . shall revoke the
11 certificate of authority of any such
12 company in this State refusing to permit
13 such examination. . . .

14 Revised Law

15 Sec. 401.062. STAY OF RULE, ORDER, DECISION, OR
16 FINDING. The filing of a petition under Subchapter D, Chapter 36,
17 for judicial review of a rule, order, decision, or finding of the
18 commissioner or department under this subchapter operates as a stay
19 of the rule, order, decision, or finding until the court directs
20 otherwise. (V.T.I.C. Art. 1.15, Sec. 4.)

21 Source Law

22 Sec. 4. Any rule, regulation, order, decision
23 or finding of the Board under this Act shall be subject
24 to review in accordance with Article 1.04 of this code.
25 The filing of such suit shall operate as a stay of any
26 such rule, regulation, order, decision or finding of
27 the Board until the court directs otherwise.

28 Revisor's Note

29 Section 4, V.T.I.C. Article 1.15, states that a
30 rule, order, decision, or finding of the commissioner
31 of insurance or the Texas Department of Insurance is
32 subject to review under V.T.I.C. Article 1.04, revised
33 in 1999 as Subchapter D, Chapter 36, of this code. The
34 revised law omits the reference to a rule, order,
35 decision, or finding being subject to review under
36 Article 1.04 because a rule, order, decision, or
37 finding is already subject to appeal in the manner
38 provided by Subchapter D, Chapter 36, and an

1 additional statement to that effect in this chapter is
2 unnecessary.

3 [Sections 401.063-401.100 reserved for expansion]

4 SUBCHAPTER C. EXAMINERS AND ACTUARIES

5 Revised Law

6 Sec. 401.101. USE OF DEPARTMENT EXAMINER OR OTHER QUALIFIED
7 PERSON OR FIRM. The department may use a salaried department
8 examiner or may appoint a qualified person or firm to perform an
9 examination of an insurance organization as provided by law or to
10 assist in the performance of an examination. (V.T.I.C. Art. 1.04A
11 (part).)

12 Source Law

13 Art. 1.04A. In making examinations of any
14 insurance organization as provided by law, the
15 department may use its own salaried examiners or may
16 use the services of persons or firms qualified to
17 perform such examinations or assist in the performance
18 of such examinations. . . .

19 Revised Law

20 Sec. 401.102. LEGISLATIVE INTENT AS TO APPOINTMENT OR
21 EMPLOYMENT OF EXAMINERS AND ACTUARIES. (a) The legislature
22 recognizes that experienced, highly qualified examiners and
23 actuaries are necessary for the department to effectively monitor
24 and regulate the solvency of insurers in this state. It is the
25 intent of the legislature that the department, in appointing or
26 employing an examiner or actuary, select a person who:

27 (1) has substantial experience in financial matters
28 relating to insurance or other areas of financial activity that are
29 compatible with the business of insurance; and

30 (2) is recognized for the outstanding quality of the
31 person's work in relation to areas of responsibility typically
32 assigned to an examiner or actuary in the insurance field.

33 (b) The legislature pledges to provide to the department the
34 necessary funding to implement this section and to support the
35 department in the department's efforts to attract the highly
36 qualified persons necessary to fulfill regulatory responsibilities

1 relating to insurer solvency assigned to those persons under the
2 insurance laws of this state. (V.T.I.C. Art. 1.17A.)

3 Source Law

4 Art. 1.17A. (a) The Legislature recognizes that
5 experienced, highly qualified examiners and actuaries
6 are necessary for the department to monitor and
7 regulate effectively the solvency of insurers in this
8 state. It is the intent of the Legislature that the
9 department, in appointing or employing examiners or
10 actuaries, select persons who have substantial
11 experience in financial matters relating to insurance
12 or other areas of financial activity that are
13 compatible with the business of insurance and who are
14 recognized for the outstanding quality of their work
15 in relation to areas of responsibility typically
16 assigned to examiners and actuaries in the insurance
17 field.

18 (b) The Legislature pledges to provide to the
19 department the necessary funding to implement this
20 article and to support the department in its efforts to
21 attract the highly qualified persons necessary to
22 fulfill regulatory responsibilities relating to
23 insurer solvency assigned to them under the insurance
24 laws of this state.

25 Revised Law

26 Sec. 401.103. APPOINTMENT OF EXAMINERS AND ACTUARIES. (a)
27 The department shall appoint:

28 (1) a chief examiner and the number of assistant
29 examiners the department considers necessary to conduct
30 examinations of insurance companies, corporations, and
31 associations at the expense of the insurance company, corporation,
32 or association as provided by law; and

33 (2) the number of actuaries the department considers
34 necessary to:

35 (A) advise the department in connection with the
36 performance of the department's duties; and

37 (B) otherwise aid and counsel the department in
38 connection with the examinations.

39 (b) The department may increase or decrease the number of
40 examiners or actuaries as needed for examination duties. (V.T.I.C.
41 Art. 1.17 (part).)

42 Source Law

43 Art. 1.17. The State Board of Insurance shall
44 appoint a chief examiner and such number of assistant
45 examiners as it deems necessary for the purpose of

1 making examinations of insurance companies,
2 corporations, or associations at the expense of such
3 companies, corporations, or associations as are
4 provided for by law. The State Board of Insurance
5 shall also appoint the number of actuaries it
6 considers necessary to advise it in connection with
7 the performance of its duties and for aid, advice, and
8 counsel in connection with such examinations. Such
9 examiners and actuaries shall perform all the duties
10 relative to examinations. . . .

11 All such examiners and actuaries shall be
12 employed subject to the will of the State Board of
13 Insurance and the number of such examiners and
14 actuaries may be increased or decreased from time to
15 time to suit the needs of the examining work.
16 . . .

17 Revisor's Note

18 (1) V.T.I.C. Article 1.17 states that examiners
19 and actuaries appointed under that article "shall
20 perform all the duties relative to examinations." The
21 substance of Article 1.17 was originally enacted by
22 the second Section 3, Chapter 152, Acts of the 42nd
23 Legislature, Regular Session, 1931, and included the
24 references to the examiners and actuaries performing
25 all duties relative to examinations. V.T.I.C. Article
26 1.04A, as amended by Chapter 1082, Acts of the 71st
27 Legislature, Regular Session, 1989, and revised in
28 this chapter in relevant part as Section 401.101,
29 provides that the Texas Department of Insurance may
30 use a salaried department examiner or the services of
31 any qualified person or firm to make an examination.
32 Therefore, the revised law omits the quoted provision
33 of Article 1.17 as impliedly repealed by Article
34 1.04A.

35 (2) V.T.I.C. Article 1.17 states that an
36 examiner or actuary is employed "subject to the will"
37 of the Texas Department of Insurance. The revised law
38 omits that provision as unnecessary because under the
39 employment-at-will doctrine that applies to all public
40 employees, an examiner or actuary automatically serves
41 at the will of the hiring agency.

42 (3) V.T.I.C. Article 1.17 states that the

purpose of that article and V.T.I.C. Articles 1.16 and 1.18 is to provide for the examination of all corporations, firms, or persons engaged in writing insurance in this state. The revised law omits that provision as unnecessary because V.T.I.C. Article 1.15, revised in relevant part in this chapter in Section 401.051, provides for the examination of all carriers organized under the laws of this state or authorized to engage in business in this state. The omitted law reads:

Art. 1.17. . . . It is the purpose of this Article and Articles 1.16 and 1.18 of this Code to provide for the examination by the State Board of Insurance of all corporations, firms, or persons engaged in the business of writing insurance of any kind in this State whether now subject to the supervision of the State Board of Insurance or not.

• • •

Revised Law

Sec. 401.104. APPOINTMENT OF EXAMINERS, ACTUARIES, AND OTHER PERSONS FOR CERTAIN EXAMINATIONS. (a) The department may commission a department actuary, the chief examiner, another department examiner or employee, or any other person to conduct or assist in the examination of a company that is not organized under the laws of this state.

(b) The department may compensate a person described by Subsection (a). If the department compensates the person, the person may not receive any other compensation while the person is assigned to the examination.

(c) Except as provided by this section and Section 401.152, a department actuary or examiner may not continue to serve in that capacity if the person directly or indirectly accepts employment or compensation for a service rendered or to be rendered from any insurance company for any reason. (V.T.I.C. Art. 1.17 (part).)

Source Law

Art. 1.17. . . . Where the State Board of Insurance shall deem it advisable it may commission

1 any actuary of the Board, the chief examiner, or any
2 other examiner or employee of the Board, or any other
3 person, to conduct or assist in the examination of any
4 company not organized under the laws of Texas and allow
5 them compensation as herein provided, except that they
6 may not be otherwise compensated during the time they
7 are assigned to such foreign company examinations.
8 Other than as provided herein, neither any actuary nor
9 any examiner of the State Board of Insurance may
10 continue to serve as such if, while holding such
11 position, he directly or indirectly accepts from any
12 insurance company any employment or pay or
13 compensation or gratuity on account of any service
14 rendered or to be rendered on any account whatsoever.

15 Revisor's Note

16 (1) V.T.I.C. Article 1.17 provides that
17 "[o]ther than as provided herein," an actuary or
18 examiner may not continue to serve in that capacity if
19 the person directly or indirectly accepts from an
20 insurer employment or compensation for a service
21 rendered or to be rendered. The substance of Article
22 1.17 was originally enacted by Chapter 152, Acts of the
23 42nd Legislature, Regular Session, 1931, as the second
24 "Section 3." The provisions enacted by Chapter 152,
25 Acts of the 42nd Legislature, Regular Session, 1931,
26 which also contained the substance of V.T.I.C.
27 Articles 1.15, 1.16, and 1.18, originally applied only
28 to examinations of domestic insurers, required that an
29 actuary or examiner be paid a salary, and prohibited an
30 actuary or examiner from continuing to serve in that
31 capacity if the person directly or indirectly accepted
32 compensation from an insurer. In 1939, the provisions
33 enacted by Chapter 152, Acts of the 42nd Legislature,
34 Regular Session, 1931, were amended by Chapter 2, Acts
35 of the 46th Legislature, Regular Session, to allow for
36 the examination of insurers not organized under the
37 laws of this state. The amendment provided that those
38 insurers being examined were responsible for paying
39 the examiners' compensation and expenses and modified
40 the prohibition on accepting direct or indirect
41 compensation so that the provision stated that

1 "[o]ther than as thus provided" an actuary or examiner
2 could not continue to serve in that capacity if the
3 person directly or indirectly accepted compensation
4 from an insurer. It is apparent from the context of
5 the quoted language that the quoted language referred
6 to other provisions enacted by Chapter 152, Acts of the
7 42nd Legislature, Regular Session, 1931, as amended.
8 Chapter 491, Acts of the 52nd Legislature, Regular
9 Session, 1951, codified these provisions as V.T.I.C.
10 Articles 1.15, 1.16, 1.17, and 1.18. The provisions
11 relating to the compensation of actuaries and
12 examiners for examining insurers not organized under
13 the laws of this state were codified in V.T.I.C.
14 Article 1.17, the relevant provisions of which are
15 revised in this section, and V.T.I.C. Article 1.16,
16 the relevant provisions of which are revised in this
17 chapter as Section 401.152. Therefore, the revised
18 law substitutes a reference to "[e]xcept as provided
19 by this section and Section 401.152" for the source law
20 reference to "[o]ther than as provided herein."

21 (2) V.T.I.C. Article 1.17 prohibits a person
22 from continuing to serve as an actuary or examiner of
23 the Texas Department of Insurance if the person
24 receives "pay or compensation or gratuity" from an
25 insurance company for any service rendered or to be
26 rendered. The revised law omits "pay" and "gratuity"
27 as unnecessary because, in context, those terms are
28 included within the meaning of "compensation."

29 Revised Law

30 Sec. 401.105. OATH OF EXAMINERS AND ASSISTANTS. Before
31 entering into the duties of appointment as an examiner or assistant
32 examiner, an individual must take and file in the office of the
33 secretary of state an oath to:

34 (1) support the constitution of this state;

1 (2) faithfully conduct the individual's duties of
2 office;

3 (3) make fair and impartial examinations;

4 (4) not accept, directly or indirectly, as a gift or
5 emolument any pay for the discharge of the individual's duty, other
6 than the compensation to which the individual is entitled by law;
7 and

8 (5) not reveal the condition of a corporation, firm,
9 or person or any information secured while examining a corporation,
10 firm, or person to anyone other than:

11 (A) the department or an authorized
12 representative of the department; or

13 (B) as required when testifying in an
14 administrative hearing under this code or another insurance law of
15 this state or in court. (V.T.I.C. Art. 1.18 (part).)

16 Source Law

17 Art. 1.18. Each examiner and assistant
18 examiner, before entering upon the duties of his
19 appointment shall take and file in the office of the
20 Secretary of State an oath to support the Constitution
21 of this State, to faithfully demean himself in office,
22 to make fair and impartial examinations, and that he
23 will not accept as presents or emoluments any pay,
24 directly or indirectly, for the discharge of his duty,
25 other than the remuneration fixed and accorded to him
26 by law; and that he will not reveal the condition of,
27 nor any information secured in the course of any
28 examination of any corporation, firm or person
29 examined by him, to anyone except the Members of the
30 State Board of Insurance, or their authorized
31 representative, or when required as witness in an
32 administrative hearing before the Board or the
33 Commissioner or in Court.

34 . . .

35 Revisor's Note

36 (1) V.T.I.C. Article 1.18 refers to the
37 "remuneration" accorded an examiner or assistant
38 examiner by law. The revised law substitutes
39 "compensation" for "remuneration" because the terms
40 are synonymous and the former is more commonly used.

41 (2) V.T.I.C. Article 1.18 refers to an
42 administrative hearing before the "[c]ommissioner."

1 Formerly administrative hearings required to be held
2 under this code or another insurance law of this state
3 were held before the commissioner. In 1993, the
4 legislature enacted V.T.I.C. Article 1.33B, revised in
5 Chapter 40 of this code, which provides that certain
6 administrative hearings be conducted by the State
7 Office of Administrative Hearings. Therefore, to
8 continue the application of the revised law to the
9 hearings in question, the revised law substitutes a
10 reference to an administrative hearing "under this
11 code or another insurance law of this state" for the
12 reference to a hearing before the "[c]ommissioner."

13 Revised Law

14 Sec. 401.106. RIGHT OF ACTION ON BOND. If an examiner or
15 assistant examiner knowingly makes a false report or gives any
16 information in violation of law that relates to an examination of a
17 corporation, firm, or person, the corporation, firm, or person has
18 a right of action on a bond authorized under Chapter 653, Government
19 Code, for the entity's injuries in a suit brought in the name of the
20 state at the relation of the entity. (V.T.I.C. Art. 1.18 (part).)

21 Source Law

22 Art. 1.18. . . . In case any such examiner or
23 assistant examiner shall knowingly make any false
24 report or give any information in violation of law
25 relative to any such examination of any corporation,
26 firm or person so examined, any such corporation, firm
27 or person shall have a right of action on a bond
28 authorized under Chapter 653, Government Code, for his
29 injuries in a suit brought in the name of the State at
30 the relation of the injured party.

31 [Sections 401.107-401.150 reserved for expansion]

32 SUBCHAPTER D. EXAMINATION EXPENSES

33 Revised Law

34 Sec. 401.151. EXPENSES OF EXAMINATION OF DOMESTIC INSURER.

35 (a) A domestic insurer examined on behalf of this state by the
36 department or under the department's authority shall pay the
37 expenses of the examination in an amount the commissioner certifies
38 as just and reasonable.

1 (b) The department shall collect an assessment at the time
2 of the examination to cover all expenses attributable directly to
3 that examination, including:

4 (1) the salaries and expenses of department employees;
5 and

6 (2) expenses described by Section 803.007.

7 (c) The department shall also impose an annual assessment on
8 domestic insurers in an amount sufficient to meet all other
9 expenses and disbursements necessary to comply with the laws of
10 this state relating to the examination of insurers.

11 (d) In determining the amount of the assessment under
12 Subsection (c), the department:

13 (1) shall consider:

14 (A) the insurer's annual premium receipts or
15 admitted assets, or both, that are not attributable to 90 percent of
16 pension plan contracts as defined by Section 818(a), Internal
17 Revenue Code of 1986; or

18 (B) the total amount of the insurer's insurance
19 in force; and

20 (2) may not consider insurance premiums for insurance
21 contracted for by a state or federal governmental entity to provide
22 welfare benefits to designated welfare recipients or contracted for
23 in accordance with or in furtherance of Title 2, Human Resources
24 Code, or the federal Social Security Act (42 U.S.C. Section 301 et
25 seq.).

26 (e) The amount of all examination and evaluation fees paid
27 to the state by an insurer in each taxable year shall be allowed as a
28 credit on the amount of premium taxes due under this subchapter.
29 (V.T.I.C. Art. 1.16, Secs. (a), (b) (part); Art. 1.19 (part).)

30 Source Law

31 Art. 1.16. (a) The expenses of all examinations
32 of domestic insurance companies made on behalf of the
33 State of Texas by the State Board of Insurance or under
34 its authority shall be paid by the corporations
35 examined in such amount as the Commissioner of
36 Insurance shall certify to be just and reasonable.

37 (b) Assessments for the expenses of such

domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the State Board of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force; provided such assessments shall be made and collected as follows: (1) expenses attributable directly to a specific examination including employees' salaries and expenses and expenses provided by Article 1.28 of this Code shall be collected at the time of examination; (2) assessments calculated annually for each corporation or association which take into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force shall be assessed annually for each such corporation or association. In computing the assessments, the board may not consider insurance premiums for insurance contracted for by a state or federal governmental entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of Title 2, Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.). The amount of all examination and evaluation fees paid in each taxable year to the State of Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due under this article. . . .

[Art. 1.19]

3. . . . The reasonable expenses of all such examination shall be paid by the company examined.
. . .

Revisor's Note

(1) Section (b), V.T.I.C. Article 1.16, refers to expenses and disbursements necessary to comply with the laws of this state "relating to the examination of insurance companies" and with "Articles 1.17 and 1.18" of this code. The revised law omits the reference to V.T.I.C. Articles 1.17 and 1.18 as unnecessary because those articles are included within the laws of this state "relating to the examination of insurance companies."

(2) Section (b), V.T.I.C. Article 1.16, refers to expenses attributable directly to a specific

1 examination, including "expenses provided by Article
2 1.28 of this Code." V.T.I.C. Article 1.28 was revised
3 as Chapter 803 of this code. The only section of
4 Chapter 803 that relates to expenses is Section
5 803.007, and the revised law is drafted accordingly.

6 Revised Law

7 Sec. 401.152. EXPENSES OF EXAMINATION OF OTHER INSURERS.

8 (a) An insurer not organized under the laws of this state shall
9 reimburse the department for the salary and expenses of each
10 examiner participating in an examination of the insurer and for
11 other department expenses that are properly allocable to the
12 department's participation in the examination.

13 (b) An insurer shall pay the expenses under this section
14 regardless of whether the examination is made only by the
15 department or jointly with the insurance supervisory authority of
16 another state.

17 (c) The insurer shall pay the expenses directly to the
18 department on presentation of an itemized written statement from
19 the commissioner.

20 (d) The commissioner shall determine the salary of an
21 examiner participating in an examination of an insurer's books or
22 records located in another state based on the salary rate
23 recommended by the National Association of Insurance Commissioners
24 or the examiner's regular salary rate.

25 (e) The limitations provided by Sections 803.007(1) and
26 (2)(B) for a domestic company apply to a foreign insurer. (V.T.I.C.
27 Art. 1.16, Secs. (b) (part), (f) (part).)

28 Source Law

29 (b) . . . The limitations provided by Sections
30 803.007(1) and (2)(B) of this code for domestic
31 insurance companies apply to foreign insurance
32 companies.

33 (f) In case of an examination of a company not
34 organized under the laws of Texas, whether such
35 examination is made by the Texas authorities alone, or
36 jointly with the insurance supervisory authorities of
37 another state or states, the expenses of such
38 examination due to Texas' participation therein shall

1 be borne by the company under examination. Payment of
2 such cost shall be made by the company upon
3 presentation of itemized written statement by the
4 Commissioner of Insurance and shall consist of the
5 examiners' remuneration and expenses, and the other
6 expenses of the State Board of Insurance properly
7 allocable to the examination. Payment shall be made
8 directly to the State Board of Insurance,
9 and The remuneration of examiners
10 participating in examinations of insurance company
11 books or records located in states other than Texas
12 shall be fixed by the Commissioner of Insurance based
13 on the salary rate recommended by the National
14 Association of Insurance Commissioners or the
15 examiners' regular salary rate.

16 Revisor's Note

17 Section (f), V.T.I.C. Article 1.16, refers to
18 certain examinations being made by "Texas authorities"
19 and to "Texas' participation" in those examinations.
20 For clarity, the revised law substitutes references to
21 the "department" for the quoted references because the
22 Texas Department of Insurance is the state authority
23 that would conduct or participate in those
24 examinations.

25 Revised Law

26 Sec. 401.153. REIMBURSEMENT OF EXPENSES OF CERTAIN PERSONS
27 OR FIRMS. (a) A person or firm appointed by the department to
28 examine an insurer or to assist in the insurer's examination shall
29 be paid for those services at the usual and customary rates charged
30 for those services. The insurer being examined shall pay the fee
31 for those services.

32 (b) The commissioner may disapprove the payment of a fee
33 under Subsection (a) if the fee is excessive in relation to the
34 services actually performed. (V.T.I.C. Art. 1.04A (part).)

35 Source Law

36 Art. 1.04A. . . . All fees paid to those
37 persons or firms whose services are used shall be paid
38 at the usual and customary rates charged for the
39 performance of those services, subject to the right of
40 the Commissioner to disapprove for payment any fees
41 that are excessive in relation to the services
42 actually performed. Such payment shall be made by the
43 insurance organization being examined and

44 Revised Law

45 Sec. 401.154. TAX CREDIT AUTHORIZED. An insurer is

1 entitled to a credit on the amount of premium or other taxes to be
2 paid by the insurer for all examination fees paid under Section
3 401.153. The insurer may take the credit for the taxable year
4 during which the examination fees are paid and may take the credit
5 to the same extent the insurer may take a credit for examination
6 fees paid when a salaried department examiner conducts the
7 examination. (V.T.I.C. Art. 1.04A (part).)

8 Source Law

9 Art. 1.04A. . . . all such examination fees so
10 paid shall be allowed as a credit on the amount of
11 premium or other taxes to be paid by any such insurance
12 organization for the taxable year during which
13 examination fees are paid just as examination fees are
14 credited when the department uses its own salaried
15 examiners.

16 Revised Law

17 Sec. 401.155. ADDITIONAL ASSESSMENTS. (a) The department
18 shall impose additional assessments against insurers on a pro rata
19 basis as necessary to:

20 (1) cover all expenses and disbursements required by
21 law; and

22 (2) comply with this subchapter and Sections 401.103,
23 401.104, 401.105, and 401.106.

24 (b) The department shall use any surplus resulting from an
25 assessment under this section to reduce the amount of subsequent
26 assessments. (V.T.I.C. Art. 1.16, Sec. (e).)

27 Source Law

28 (e) If at any time it shall appear that
29 additional pro rata assessments are necessary to cover
30 all of the expenses and disbursements required by law
31 and necessary to comply with this Article and Articles
32 1.17 and 1.18 of this Code, the same shall be made, and
33 any surplus arising from any and all such assessments,
34 over and above such expenses and disbursements, shall
35 be applied in reduction of subsequent assessments.

36 Revised Law

37 Sec. 401.156. DEPOSIT AND USE OF ASSESSMENT AND FEE. (a)
38 The department shall deposit an assessment or fee collected under
39 this subchapter to the credit of the Texas Department of Insurance
40 operating account.

1 (b) Money deposited under this section shall be used to pay
2 the salaries and expenses of actuaries and examiners and all other
3 expenses relating to examinations of insurers. (V.T.I.C. Art.
4 1.16, Secs. (d) (part), (f) (part).)

5 Source Law

6 (d) All sums collected by the State Board of
7 Insurance provided in this Article shall be deposited
8 in the State Treasury to the credit of the State Board
9 of Insurance operating fund; and the salaries and
10 expenses of the actuaries and examiners, and all other
11 expenses relating to such examinations, shall be
12 paid

13 (f) . . . all money collected by assessment on
14 foreign companies for the cost of examination shall be
15 deposited in the State Treasury by the State Board of
16 Insurance to the credit of the State Board of Insurance
17 operating fund and

18 Revisor's Note

19 Section (d), V.T.I.C. Article 1.16, states that
20 expenses of an examination shall be paid on the
21 certificate of the Texas Department of Insurance by
22 warrant of the comptroller drawn on the Texas
23 Department of Insurance operating account. Section
24 (f), V.T.I.C. Article 1.16, states that money in the
25 account shall be spent as authorized by the General
26 Appropriations Act only on warrants issued by the
27 comptroller on requisition by the department. The
28 revised law omits as unnecessary that part of Section
29 (f) relating to the expenditure of money as authorized
30 by the General Appropriations Act because Section 6,
31 Article VIII, Texas Constitution, provides that "[n]o
32 money shall be drawn from the Treasury but in pursuance
33 of specific appropriations made by law." The revised
34 law also omits the provisions in Sections (d) and (f)
35 relating to warrants issued by the comptroller on
36 requisition of the department because they are
37 substantially duplicative of provisions contained in
38 Chapter 2103, Government Code, which is a
39 comprehensive law covering procedures for withdrawing

1 money from the state treasury. The omitted law reads:

2 (d) . . . upon the certificate of the
3 State Board of Insurance by warrant of the
4 Comptroller of Public Accounts drawn upon
5 such fund.

6 (f) . . . shall be spent as provided
7 by the General Appropriations Act only on
8 warrants issued by the Comptroller of
9 Public Accounts pursuant to duly certified
10 requisitions of the State Board of
11 Insurance. . . .

12 Revisor's Note
13 (End of Subchapter)

14 Section (c), V.T.I.C. Article 1.16, added by
15 Chapter 161, Acts of the 69th Legislature, Regular
16 Session, 1985, provides for the reimbursement of
17 travel expenses for Texas Department of Insurance
18 employees. The revised law omits the section as
19 impliedly repealed by a 1997 amendment to Chapter 660,
20 Government Code. Section 660.003(a), Government Code,
21 provides that Chapter 660, the General Appropriations
22 Act, and the rules adopted by the comptroller under
23 Chapter 660 govern the procedures, amounts, timing,
24 limits, required documentation, permissible payees,
25 distinctions among different types of state employees,
26 and all other details concerning travel expense
27 payments or reimbursements by a state agency. The
28 omitted law reads:

29 (c) Examiners and other personnel
30 employed by the State Board of Insurance
31 when traveling on official state business
32 related to the examination of insurance
33 companies outside this state shall be
34 reimbursed for the actual cost of
35 transportation, lodging, meals,
36 subsistence expenses, and parking fees or
37 shall be paid a per diem rate established by
38 the State Board of Insurance based on local
39 economic conditions. The State Board of
40 Insurance shall establish guidelines and
41 procedures for the efficient and effective
42 administration of these travel payment
43 procedures and shall periodically revise
44 and update these guidelines and procedures
45 including the maximum actual or per diem
46 allowance.

47 [Sections 401.157-401.200 reserved for expansion]

SUBCHAPTER E. CONFIDENTIALITY OF CERTAIN INFORMATION

Revised Law

Sec. 401.201. CONFIDENTIALITY OF EARLY WARNING SYSTEM INFORMATION. Information relating to the financial solvency of an organization regulated by the department under this code or another insurance law of this state that is obtained by the department's early warning system is confidential and is not subject to disclosure under Chapter 552, Government Code. (V.T.I.C. Art. 1.15B.)

Source Law

Art. 1.15B. Any information relating to the financial solvency of any organization regulated by the department under this code or another insurance law of this state obtained by the department's early warning system is confidential and is not subject to disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments.

CHAPTER 402. DISCLOSURE OF MATERIAL TRANSACTIONS

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12 CHAPTER 402. DISCLOSURE OF MATERIAL TRANSACTIONS
13 SUBCHAPTER A. GENERAL PROVISIONS

14 Revised Law

15 Sec. 402.001. APPLICABILITY OF CHAPTER. (a) Except as
16 provided by Subsection (b), this chapter applies to:
17 (1) each of the following domestic or commercially
18 domiciled insurers:
19 (A) a capital stock insurance company;
20 (B) a mutual insurance company;
21 (C) a title insurance company;
22 (D) a fraternal benefit society;
23 (E) a Lloyd's plan;
24 (F) a reciprocal or interinsurance exchange;
25 (G) a group hospital service corporation or a
26 nonprofit hospital, medical, or dental service corporation;
27 (H) a risk retention group; and
28 (I) a nonprofit legal services corporation; and
29 (2) a domestic or commercially domiciled health
30 maintenance organization.
31 (b) This chapter does not apply to a domestic insurer that
32 engages in the business of insurance only in this state or to a
33 domestic health maintenance organization that engages in the
34 business of a health maintenance organization only in this state

1 until the insurer or health maintenance organization is authorized
2 to engage in the business of insurance or the business of a health
3 maintenance organization, as applicable, in another state.
4 (V.T.I.C. Art. 21.49-8, Sec. 1.)

5 Source Law

6 Art. 21.49-8

7 Sec. 1. (a) Except as provided by Subsection
8 (b) of this section, this article applies to the
9 following domestic insurers and commercially
10 domiciled insurers:

- 11 (1) a capital stock company;
12 (2) a mutual company;
13 (3) a title insurance company;
14 (4) a fraternal benefit society;
15 (5) a Lloyd's plan company;
16 (6) a reciprocal or interinsurance
17 exchange;
18 (7) a group hospital service corporation;
19 (8) a health maintenance organization;
20 (9) a risk retention group;
21 (10) a nonprofit legal service
22 corporation; and
23 (11) a nonprofit hospital, medical, or
24 dental service corporation.

25 (b) A domestic insurer listed under Subsection
26 (a) of this section that does business only in this
27 state is exempt from the application of this article
28 until the insurer obtains authority to conduct the
29 business of insurance in another state.

30 Revisor's Note

31 Section 1(a), V.T.I.C. Article 21.49-8, provides
32 that the article applies to certain listed domestic
33 and commercially domiciled "insurers." Included among
34 the listed entities is a "health maintenance
35 organization," which is not a traditional insurer.
36 The revised law is drafted to reflect its application
37 to both traditional insurers and health maintenance
38 organizations, and terminology consistent with that
39 application is added throughout this chapter.

40 Revised Law

41 Sec. 402.002. GENERAL REPORTING REQUIREMENTS. (a) An
42 insurer or health maintenance organization shall file with the
43 department a report, including any necessary exhibit or other
44 attachment, that discloses:

- 45 (1) the material acquisition or disposition of assets;

1 or

2 (2) the material nonrenewal, cancellation, or
3 revision of a ceded reinsurance agreement.

4 (b) The insurer or health maintenance organization shall
5 file the report required under Subsection (a) not later than the
6 15th day after the last day of the calendar month in which any
7 transaction for which a report is required occurs. (V.T.I.C.
8 Art. 21.49-8, Secs. 2(a) (part), (b), (c).)

9 Source Law

10 Sec. 2. (a) . . . each insurer shall file a
11 report with the commissioner that discloses:

12 (1) material acquisitions and
13 dispositions of assets; or

14 (2) material nonrenewals, cancellations,
15 or revisions of ceded reinsurance agreements.

16 (b) The report required under Subsection (a) of
17 this section must be filed not later than the 15th day
18 after the last day of the calendar month in which any
19 of the affected transactions occur.

20 (c) The insurer also shall file one complete
21 copy of the report, including any necessary exhibits
22 or other attachments, with the department.

23 Revisor's Note

24 Section 2(a), V.T.I.C. Article 21.49-8, requires
25 an insurer or health maintenance organization to file
26 a report with the commissioner of insurance concerning
27 material acquisitions and dispositions of assets or
28 material nonrenewals, cancellations, or revisions of
29 ceded reinsurance agreements. Section 2(c), V.T.I.C.
30 Article 21.49-8, provides that the insurer or health
31 maintenance organization also shall file "one complete
32 copy of the report" with the Texas Department of
33 Insurance. Under Section 31.021 of this code, the
34 commissioner has a duty to administer and enforce this
35 code and has the powers and duties vested in the
36 department by this code. Therefore, filing the
37 required report with the commissioner is equivalent to
38 filing the report with the department, and the revised
39 law is drafted to reflect that only one filing is
40 required. Furthermore, since only one report is

1 filed, the revised law also omits as unnecessary the
2 reference to "one complete copy of the report."

3 Revised Law

4 Sec. 402.003. EXCEPTIONS TO REPORTING REQUIREMENTS. An
5 insurer or health maintenance organization is not required to file
6 a report under Section 402.002 if:

7 (1) the acquisition or disposition of assets or the
8 nonrenewal, cancellation, or revision of a ceded reinsurance
9 agreement is not material; or

10 (2) the insurer's or health maintenance organization's
11 material acquisition or disposition of assets or material
12 nonrenewal, cancellation, or revision of a ceded reinsurance
13 agreement has been submitted to the commissioner for review,
14 approval, or information under another provision of this code or
15 another law, regulation, or requirement. (V.T.I.C. Art. 21.49-8,
16 Secs. 2(a) (part), 3(a) (part), 4(a) (part).)

17 Source Law

18 Sec. 2. (a) Unless the material acquisition and
19 disposition of assets and the nonrenewal,
20 cancellation, or revisions of material ceded
21 reinsurance agreements have been submitted to the
22 commissioner for review, approval, or information
23 under other provisions of this code or other laws,
24 regulations, or requirements,

25 Sec. 3. (a) An insurer is not required to
26 report an acquisition or disposition of assets under
27 Section 2 of this article if the acquisition or
28 disposition is not material. . . .

29 Sec. 4. (a) An insurer is not required to
30 report a nonrenewal, cancellation, or revision of a
31 ceded reinsurance agreement under Section 2 of this
32 article if the nonrenewal, cancellation, or revision
33 is not material. . . .

34 Revised Law

35 Sec. 402.004. REPORT MADE ON NONCONSOLIDATED BASIS. (a) An
36 insurer or health maintenance organization shall report each
37 material acquisition or disposition and each material nonrenewal,
38 cancellation, or revision of a ceded reinsurance agreement on a
39 nonconsolidated basis unless the insurer or health maintenance
40 organization:

1 (1) is part of a consolidated group of insurers or
2 health maintenance organizations that uses a pooling arrangement or
3 a 100 percent reinsurance agreement that affects the solvency and
4 integrity of the insurer's or health maintenance organization's
5 reserves; and

6 (2) has ceded substantially all of the insurer's or
7 health maintenance organization's direct and assumed business to
8 the pooling arrangement.

9 (b) For purposes of Subsection (a), an insurer or health
10 maintenance organization is considered to have ceded substantially
11 all of the insurer's or health maintenance organization's direct
12 and assumed business to a pooling arrangement if:

13 (1) the insurer or health maintenance organization
14 has, during a calendar year, less than \$1 million total direct and
15 assumed written premiums that are not subject to a pooling
16 arrangement; and

17 (2) the net income of the business that is not subject
18 to the pooling arrangement represents less than five percent of the
19 insurer's or health maintenance organization's capital and surplus.
20 (V.T.I.C. Art. 21.49-8, Secs. 3(e), (f), 4(f), (g).)

21 Source Law

22 [Sec. 3]

23 (e) An insurer shall report material
24 acquisitions and dispositions on a nonconsolidated
25 basis unless the insurer:

26 (1) is part of a consolidated group of
27 insurers that uses a pooling arrangement or a 100
28 percent reinsurance agreement that affects the
29 solvency and integrity of the insurer's reserves; and

30 (2) ceded substantially all of its direct
31 and assumed business to the pooling arrangement.

32 (f) For purposes of Subsection (e), an insurer
33 is considered to have ceded substantially all of its
34 direct and assumed business to a pooling arrangement
35 if:

36 (1) the insurer has, during a calendar
37 year, less than \$1 million total direct and assumed
38 written premiums that are not subject to a pooling
39 arrangement; and

40 (2) the net income of the business not
41 subject to the pooling arrangement represents less
42 than five percent of the insurer's capital and surplus.

43 [Sec. 4]

44 (f) An insurer shall report all material
45 nonrenewals, cancellations, or revisions of ceded

1 reinsurance agreements on a nonconsolidated basis
2 unless the insurer:

3 (1) is part of a consolidated group of
4 insurers that uses a pooling arrangement or 100
5 percent reinsurance agreement that affects the
6 solvency and integrity of the insurer's reserves; and

7 (2) ceded substantially all of its direct
8 and assumed business to the pooling arrangement.

9 (g) For purposes of Subsection (f) of this
10 section, an insurer is considered to have ceded
11 substantially all of its direct and assumed business
12 to a pooling arrangement if:

13 (1) the insurer has, during a calendar
14 year, less than \$1 million total direct and assumed
15 written premiums that are not subject to the pooling
16 arrangement; and

17 (2) the net income of the business not
18 subject to the pooling arrangement represents less
19 than five percent of the insurer's capital and surplus.

20 Revised Law

21 Sec. 402.005. CONFIDENTIALITY OF REPORT. (a) A report
22 obtained by or disclosed to the commissioner under this chapter is
23 confidential and is not subject to a subpoena, other than a grand
24 jury subpoena.

25 (b) The report may not be disclosed by the commissioner, the
26 National Association of Insurance Commissioners, or any other
27 person without the prior written consent of the affected insurer or
28 health maintenance organization unless the commissioner, after
29 providing notice and an opportunity for a hearing to the affected
30 insurer or health maintenance organization, determines that the
31 interest of shareholders, holders of policies or evidences of
32 coverage, or the public will be served by publishing the report. If
33 the commissioner makes that determination, the department may:

34 (1) disclose the report to the public; and

35 (2) publish any part of the report in a manner the
36 commissioner considers appropriate.

37 (c) The report may be disclosed to the insurance department
38 of another state or another authorized governmental agency without
39 complying with Subsection (b). (V.T.I.C. Article 21.49-8, Sec.
40 2(d).)

41 Source Law

42 (d) A report obtained by or disclosed to the
43 commissioner under this article is confidential and is
44 not subject to a subpoena, other than a grand jury
45 subpoena. The report may not be disclosed by the

1 commissioner, the National Association of Insurance
2 Commissioners, or any other person, except to the
3 insurance department of another state or another
4 authorized governmental agency, without the prior
5 written consent of the affected insurer, unless the
6 commissioner, after notice to the affected insurer and
7 an opportunity for a hearing, determines that the
8 interest of policyholders, shareholders, or the public
9 will be served by the publication of the report. If
10 the commissioner does so determine, the department may
11 disclose a report to the public and may publish all or
12 any part of the report in any manner considered
13 appropriate by the commissioner.

14 Revisor's Note

15 Section 2(d), V.T.I.C. Article 21.49-8, refers to
16 the commissioner of insurance making a determination
17 concerning the interest of "policyholders." Because
18 that section applies to health maintenance
19 organizations as well as traditional insurers, and
20 because health maintenance organizations do not have
21 "policyholders," the revised law adds a reference to
22 "holders of . . . evidences of coverage" to clarify
23 that the commissioner of insurance must consider the
24 interest of persons provided coverage by health
25 maintenance organizations.

26 [Sections 402.006-402.050 reserved for expansion]

27 SUBCHAPTER B. ACQUISITION AND DISPOSITION OF ASSETS

28 Revised Law

29 Sec. 402.051. ACQUISITIONS AND DISPOSITIONS CONSIDERED
30 MATERIAL. For purposes of this chapter, an acquisition, or the
31 aggregate of a series of related acquisitions during a 30-day
32 period, or a disposition, or the aggregate of a series of related
33 dispositions during a 30-day period, is material if it:

- 34 (1) is not recurring;
- 35 (2) is not in the ordinary course of business; and
- 36 (3) involves more than five percent of the reporting
37 insurer's or health maintenance organization's total admitted
38 assets as reported in the insurer's or health maintenance
39 organization's most recent statutory statement filed with the
40 department. (V.T.I.C. Art. 21.49-8, Sec. 3(a) (part).)

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(1) is not recurring;

(2) is not in the ordinary course of business; and

(3) involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the department.

Sec. 402.052. ACQUISITIONS AND DISPOSITIONS SUBJECT TO CHAPTER. (a) An asset acquisition subject to this chapter includes a purchase, lease, exchange, merger, consolidation, succession, or other acquisition of assets, except the construction or development of real property by or for the reporting insurer or health maintenance organization or the acquisition of materials for that purpose.

(b) An asset disposition subject to this chapter includes a sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of a creditor or otherwise, abandonment, destruction, or other disposition of assets. (V.T.I.C. Art. 21.49-8, Secs. 3(b), (c).)

(b) An asset acquisition subject to this article includes each purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for that purpose.

(c) An asset disposition subject to this article includes each sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

Sec. 402.053. CONTENT OF REPORT CONCERNING MATERIAL ACQUISITIONS AND DISPOSITIONS. In a report of a material acquisition or disposition of assets under Section 402.002, an insurer or health maintenance organization shall disclose:

(1) the date of the transaction;

- (2) the manner of acquisition or disposition;
- (3) a description of the assets involved;
- (4) the nature and amount of the consideration given or received;
- (5) the purpose of the transaction;
- (6) the manner by which the amount of consideration was determined;
- (7) the gain or loss recognized or realized as a result of the transaction; and
- (8) the name of each person from whom the assets were acquired or to whom they were disposed. (V.T.I.C. Art. 21.49-8, Sec. 3(d).)

Source Law

(d) The following information must be disclosed in a report of a material acquisition or disposition of assets:

- (1) the date of the transaction;
- (2) the manner of acquisition or disposition;
- (3) a description of the assets involved;
- (4) the nature and amount of the consideration given or received;
- (5) the purpose of or reason for the transaction;
- (6) the manner by which the amount of consideration was determined;
- (7) the gain or loss recognized or realized as a result of the transaction; and
- (8) the name of each person from whom the assets were acquired or to whom they were disposed.

Revisor's Note

Section 3(d)(5), V.T.I.C. Article 21.49-8, provides that an insurer or health maintenance organization shall disclose "the purpose of or reason for" certain transactions. The revised law omits the reference to the "reason for" because the "reason for" is included within the meaning of "the purpose of."

[Sections 402.054-402.100 reserved for expansion]

SUBCHAPTER C. NONRENEWAL, CANCELLATION, AND REVISION OF CEDED REINSURANCE AGREEMENTS

Revised Law

Sec. 402.101. NONRENEWALS, CANCELLATIONS, AND REVISIONS

1 CONSIDERED MATERIAL. For purposes of this chapter, a nonrenewal,
2 cancellation, or revision of a ceded reinsurance agreement is
3 material if, on an annual basis, as reported in an insurer's or
4 health maintenance organization's most recent statutory statement
5 filed with the department, the nonrenewal, cancellation, or
6 revision affects:

7 (1) for property and casualty business, including
8 accident and health business when written as property and casualty
9 business, more than 50 percent of the insurer's or health
10 maintenance organization's ceded written premium; or

11 (2) for life, annuity, and accident and health
12 business, more than 50 percent of the total reserve credit taken for
13 business ceded by the insurer or health maintenance organization.
14 (V.T.I.C. Art. 21.49-8, Sec. 4(a) (part).)

15 Source Law

16 Sec. 4. (a) . . . For purposes of this
17 article, a nonrenewal, cancellation, or revision is
18 material if it affects, on an annual basis, as
19 indicated in the insurer's most recently filed
20 statutory statement:

21 (1) for property and casualty business,
22 including accident and health business when written as
23 property and casualty business, more than 50 percent
24 of an insurer's ceded written premium; or

25 (2) for life, annuity, and accident and
26 health business, more than 50 percent of the total
27 reserve credit taken for business ceded.

28 Revisor's Note

29 Section 4(a), V.T.I.C. Article 21.49-8, refers to
30 specified percentages of ceded written premium and of
31 the total reserve credit taken for business ceded "as
32 indicated in the insurer's most recently filed
33 statutory statement." The revised law modifies the
34 quoted language for consistency with the terminology
35 used in Section 3(a)(3), V.T.I.C. Article 21.49-8,
36 revised in this chapter as Section 402.051(3).

37 Revised Law

38 Sec. 402.102. CONDITIONS UNDER WHICH REPORT CONCERNING
39 NONRENEWAL, CANCELLATION, OR REVISION REQUIRED. Except as

1 provided by Section 402.103, an insurer or health maintenance
2 organization shall file a report of a material nonrenewal,
3 cancellation, or revision of ceded reinsurance under Section
4 402.002, without regard to which party initiated the nonrenewal,
5 cancellation, or revision, if:

6 (1) the entire cession has been canceled, nonrenewed,
7 or revised, and ceded indemnity and loss adjustment expense
8 reserves after the nonrenewal, cancellation, or revision represent
9 less than 50 percent of the comparable reserves that would have been
10 ceded had the nonrenewal, cancellation, or revision not occurred;

11 (2) an authorized or accredited reinsurer has been
12 replaced by an unauthorized reinsurer on an existing cession, and
13 the result of the revision affects more than 10 percent of the
14 cession; or

15 (3) a collateral requirement previously established
16 for an unauthorized reinsurer has been reduced, in that the
17 requirement to collateralize incurred but unreported claim
18 reserves has been waived for at least one unauthorized reinsurer
19 newly participating in an existing cession, and the result of the
20 revision affects more than 10 percent of the cession. (V.T.I.C.
21 Art. 21.49-8, Secs. 4(c), (d).)

22 Source Law

23 (c) Subject to the requirements imposed under
24 Subsections (a) and (b) of this section, an insurer
25 shall file a report without regard to which party
26 initiated the nonrenewal, cancellation, or revision of
27 ceded reinsurance when one or more of the following
28 conditions exist:

29 (1) the entire cession has been canceled,
30 nonrenewed, or revised and ceded indemnity and loss
31 adjustment expense reserves after the nonrenewal,
32 cancellation, or revision represent less than 50
33 percent of the comparable reserves that would have
34 been ceded had the nonrenewal, cancellation, or
35 revision not occurred;

36 (2) an authorized or accredited reinsurer
37 has been replaced on an existing cession by an
38 unauthorized reinsurer; or

39 (3) collateral requirements previously
40 established for unauthorized reinsurers have been
41 reduced in that the requirement to collateralize
42 incurred but not reported claim reserves has been
43 waived for one or more unauthorized reinsurers newly
44 participating in an existing cession.

45 (d) Subject to the requirement of materiality,

1 for purposes of Subsections (c)(2) and (3) of this
2 section, an insurer shall file a report if the result
3 of the revision affects more than 10 percent of the
4 cession.

5 Revised Law

6 Sec. 402.103. CONDITIONS UNDER WHICH REPORT CONCERNING
7 NONRENEWAL, CANCELLATION, OR REVISION NOT REQUIRED. An insurer or
8 health maintenance organization is not required to file a report
9 under Section 402.002 if the insurer's or health maintenance
10 organization's ceded written premium of the total reserve credit
11 taken for business ceded is, on an annual basis, less than an amount
12 equal to:

13 (1) 10 percent of direct and assumed written premiums;

14 or

15 (2) 10 percent of the statutory reserve requirement
16 before a cession. (V.T.I.C. Art. 21.49-8, Sec. 4(b).)

17 Source Law

18 (b) An insurer is not required to report if the
19 insurer's ceded written premium of the total reserve
20 credit taken for business ceded represents, on an
21 annual basis, less than:

22 (1) 10 percent of direct and assumed
23 written premiums; or

24 (2) 10 percent of the statutory reserve
25 requirement before a cession.

26 Revised Law

27 Sec. 402.104. CONTENT OF REPORT CONCERNING MATERIAL
28 NONRENEWALS, CANCELLATIONS, AND REVISIONS. In a report of a
29 material nonrenewal, cancellation, or revision of a ceded
30 reinsurance agreement under Section 402.002, an insurer or health
31 maintenance organization shall disclose:

32 (1) the effective date of the nonrenewal,
33 cancellation, or revision;

34 (2) a description of the transaction that identifies
35 the initiator of the transaction;

36 (3) the purpose of the transaction; and

37 (4) if applicable, the identity of each replacement
38 reinsurer. (V.T.I.C. Art. 21.49-8, Sec. 4(e).)

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15 CHAPTER 403. DIVIDENDS

16 SUBCHAPTER A. PAYMENT OF DIVIDENDS

17 Revised Law

18 Sec. 403.001. LIMITATION ON DIVIDENDS. An insurer

19 organized under the laws of this state, including a life, health,

20 fire, marine, or inland marine insurance company, may not pay a

21 dividend except from surplus profits arising from the insurer's

22 business. (V.T.I.C. Arts. 21.31 (part), 21.32 (part).)

23 Source Law

24 Art. 21.31. It shall not be lawful for any

25 insurance company organized under the laws of this

26 State to make any dividend, except from surplus

27 profits arising from its business. . . .

28 Art. 21.32. No life, health, fire, marine, or

29 inland insurance company, organized under the laws of

30 this state, shall make any dividend except from the

31 surplus profits arising from its business. . . .

32 Revisor's Note

33 (1) V.T.I.C. Article 21.32 refers to an "inland

34 insurance company." Throughout this chapter, the

35 revised law substitutes references to an "inland

36 marine insurance company" for references to an "inland

37 insurance company" for consistency of terminology

1 within this code.

2 (2) V.T.I.C. Articles 21.31 and 21.32 provide
3 that an insurer may not "make any dividend." The
4 revised law substitutes "pay a dividend" for "make any
5 dividend" because, in context, the phrases are
6 synonymous and "pay a dividend" is more commonly used.

7 Revised Law

8 Sec. 403.002. DIVIDENDS TO POLICYHOLDERS IN COMMERCIAL
9 LINES. (a) An insurer may pay to a commercial policyholder or
10 group of commercial policyholders a dividend that covers more than
11 one class or line of commercial business only:

12 (1) after the insurer establishes on an aggregate
13 basis adequate loss reserves for the classes or lines of commercial
14 insurance included within the dividend; and

15 (2) if the insurer has sufficient surplus from which
16 to pay the dividend.

17 (b) Not later than the 15th day before an insurer pays a
18 dividend described by Subsection (a), the insurer shall file with
19 the department notice of the insurer's intent to pay the dividend.

20 (c) The classes or lines of commercial business for which
21 dividends are authorized under this section include any commercial
22 class or line of commercial business regulated by Title 10 or
23 Chapter 5.

24 (d) An insurer's limitation of a dividend on one or more
25 classes or lines of commercial business to a group of commercial
26 policyholders is not unfair discrimination if the group:

27 (1) has clearly identifiable underwriting
28 characteristics; or

29 (2) is an association or group of business entities
30 engaged in similar undertakings. (V.T.I.C. Art. 5.41-2.)

31 Source Law

32 Art. 5.41-2

33 Sec. 1. An insurer may pay to a commercial
34 policyholder or group of commercial policyholders a
35 dividend which covers more than one class or line of
36 commercial business. This dividend may only be paid to

1 the policyholder or group of policyholders after
2 adequate loss reserves are established on an aggregate
3 basis for the classes or lines of commercial insurance
4 included within the dividend, and the insurer must
5 have sufficient surplus from which to pay the
6 dividend. An insurer shall file a notice of its intent
7 to pay such dividend with the department at least 15
8 days prior to the payment of the dividend.

9 Sec. 2. Limitation of the payment of a dividend
10 on one or more classes or lines of commercial business
11 to a group of commercial policyholders shall not be
12 unfair discrimination so long as the group has clearly
13 identifiable underwriting characteristics or is an
14 association or group of business entities engaged in
15 similar undertakings.

16 Sec. 3. The classes or lines of commercial
17 business for which dividends are authorized under this
18 article include any or all of the commercial classes or
19 lines of commercial business regulated by this
20 chapter.

21 Revisor's Note

22 Section 3, V.T.I.C. Article 5.41-2, refers to
23 commercial classes or lines of commercial business
24 regulated by "this chapter," meaning V.T.I.C. Chapter
25 5. Portions of that chapter are revised in part in
26 various titles of this code. The relevant provisions
27 of Chapter 5 that regulate commercial classes and
28 lines of commercial business that are revised are
29 revised in Title 10 of this code. For that reason, the
30 revised law substitutes a reference to "Title 10 or
31 Chapter 5" for the reference to "this chapter."

32 [Sections 403.003-403.050 reserved for expansion]

33 SUBCHAPTER B. ESTIMATE OF PROFITS

34 Revised Law

35 Sec. 403.051. ESTIMATE OF PROFITS. An insurer organized
36 under the laws of this state may not include the following in the
37 estimate of the insurer's profits for the purpose of paying
38 dividends under Section 403.001:

39 (1) the reserve on all unexpired risks computed in the
40 manner provided by this code;

41 (2) the amount of all unpaid losses, whether adjusted
42 or unadjusted; and

43 (3) all other debts due and payable, or to become due
44 and payable, by the insurer. (V.T.I.C. Art. 21.31 (part).)

Source Law

Art. 21.31. [It shall not be lawful for any insurance company organized under the laws of this State to make any dividend, except from surplus profits arising from its business.] In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks and also the amount of all unpaid losses, whether adjusted or unadjusted, and all other debts due and payable, or to become due and payable, by the company. . . .

Revisor's Note

V.T.I.C. Article 21.31 refers to the "lawful reserve" on unexpired risks. For clarity, the revised law substitutes a reference to the "reserve . . . computed in the manner provided by this code" for the reference to the "lawful reserve" because, in this context, a "lawful reserve" is a reserve computed in the manner prescribed by this code.

Revised Law

Sec. 403.052. ESTIMATE OF PROFITS OF CERTAIN INSURERS. A life, health, fire, marine, or inland marine insurance company organized under the laws of this state may not include the following in the estimate of the company's profits for the purpose of paying dividends under Section 403.001:

(1) the reserve on all unexpired risks computed in the manner provided by this code;

(2) the amount of all unpaid losses, whether adjusted or unadjusted;

(3) each amount due the company on bonds, mortgages, stocks, or book-accounts on which no part of the principal or interest has been paid during the year preceding the estimate of profits and for which:

(A) a suit for foreclosure or collection has not been commenced; or

(B) a judgment obtained in a suit for foreclosure or collection has remained unsatisfied for a period of more than two years and no interest has been paid on the judgment; and

1 (4) if no interest has been paid on a judgment
2 described by Subdivision (3)(B), any interest that is due or
3 accrued on the judgment and remains unpaid. (V.T.I.C. Art. 21.32
4 (part).)

5 Source Law

6 Art. 21.32. [No life, health, fire, marine, or
7 inland insurance company, organized under the laws of
8 this state, shall make any dividend except from the
9 surplus profits arising from its business.] In
10 estimating such profits, there shall be reserved
11 therefrom the lawful reserve on all unexpired risks
12 computed in the manner as provided elsewhere in this
13 Code, and also there shall be reserved the amount of
14 all unpaid losses, whether adjusted or unadjusted; all
15 sums due the company on bonds, mortgages, stocks and
16 book-accounts, of which no part of the principal or the
17 interest thereon has been paid during the year
18 preceding such estimate of profits, and upon which
19 suit for foreclosures or collections has not been
20 commenced, or which after judgment has been obtained
21 thereon shall have remained more than two years
22 unsatisfied, and upon which interest shall not have
23 been paid. In case of any such judgment, the interest
24 due or accrued thereon and remaining unpaid shall also
25 be reserved. . . .

26 Revisor's Note

27 (1) V.T.I.C. Article 21.32 provides the
28 methodology by which a "life, health, fire, marine, or
29 inland insurance company, organized under the laws of
30 this state" estimates the company's surplus profits
31 for the purpose of paying dividends. However,
32 V.T.I.C. Article 21.31, revised in relevant part in
33 this chapter as Section 403.051, provides the
34 methodology by which an "insurance company organized
35 under the laws of this State" estimates surplus
36 profits for the same purpose. Because a "life, health,
37 fire, marine, or inland insurance company, organized
38 under the laws of this state" referenced in Article
39 21.32 is also an "insurance company organized under
40 the laws of this state" to which Article 21.31 applies,
41 it is ambiguous whether Article 21.32 is an exception
42 to Article 21.31 for the specified companies or
43 whether both Articles 21.31 and 21.32 apply to those

1 companies. The revised law is drafted to preserve that
2 ambiguity.

3 (2) V.T.I.C. Article 21.32 refers to the "lawful
4 reserve" on unexpired risks "computed in the manner as
5 provided elsewhere in this Code." The revised law
6 omits the reference to "lawful" for the reason stated
7 in the revisor's note to Section 403.051.

8 Revised Law

9 Sec. 403.053. ACQUIRED EARNED SURPLUS. (a) This section
10 applies only to:

11 (1) a stock domestic insurance company authorized to
12 engage in the business of life, accident, or health insurance in
13 this state;

14 (2) a stock foreign or alien life, health, or accident
15 insurance company;

16 (3) a stock insurance company authorized to engage in
17 the business of property, casualty, or fire insurance; and

18 (4) a domestic Lloyd's plan, reciprocal or
19 interinsurance exchange, or title insurance company.

20 (b) In determining the amount of "surplus profits arising
21 from the insurer's business" or "earned surplus" for the purpose of
22 paying dividends to shareholders, the insurer may include the
23 acquired earned surplus of an insurance subsidiary acquired by the
24 insurer to the extent that:

25 (1) the inclusion is permitted by an order of the
26 commissioner made in accordance with commissioner rules; and

27 (2) the earned surplus of the acquired subsidiary on
28 the date of acquisition that exists on the date of the
29 commissioner's order is not otherwise reflected in the insurer's
30 earned surplus. (V.T.I.C. Art. 21.32A.)

31 Source Law

32 Art. 21.32A. For the purpose of determining the
33 legality of a dividend to shareholders paid by stock
34 domestic insurance companies authorized to transact
35 life, accident, and health insurance business in
36 Texas, all stock foreign and alien life, health, and

1 accident insurance companies, stock insurance
2 companies authorized to transact property and casualty
3 business and fire insurance business and domestic
4 Lloyds', reciprocals, and title insurance companies
5 under the laws of the State of Texas, the "earned
6 surplus" or "surplus profits arising from the
7 business" of the insurance company may include the
8 acquired "earned surplus" of an insurance subsidiary
9 which has been acquired by the insurance company, to
10 the extent allowed by an order of the commissioner made
11 in accordance with the rules of the board but only to
12 the extent that the "earned surplus" of the acquired
13 subsidiary on the date of acquisition, and in
14 existence on the date of the order, is not otherwise
15 reflected in the "earned surplus" of the insurance
16 company.

17 Revisor's Note

18 (1) V.T.I.C. Article 21.32A refers to domestic
19 "Lloyds'" and "reciprocals." For consistency of
20 terminology within this code, the revised law
21 substitutes a reference to a "Lloyd's plan" for the
22 reference to "Lloyds'," and substitutes a reference to
23 a "reciprocal or interinsurance exchange" for the
24 reference to "reciprocals."

25 (2) V.T.I.C. Article 21.32A refers to the
26 "board," meaning the State Board of Insurance.
27 Subsequent references in this chapter are to the Board
28 of Insurance Commissioners. Under Chapter 499, Acts
29 of the 55th Legislature, Regular Session, 1957,
30 administration of the insurance laws of this state was
31 reorganized and the powers and duties of the Board of
32 Insurance Commissioners were transferred to the State
33 Board of Insurance. Chapter 685, Acts of the 73rd
34 Legislature, Regular Session, 1993, abolished the
35 State Board of Insurance and transferred its functions
36 to the commissioner of insurance and the Texas
37 Department of Insurance. Throughout this chapter,
38 references to the Board of Insurance Commissioners or
39 the State Board of Insurance have been changed
40 appropriately.

41 [Sections 403.054-403.100 reserved for expansion]

1 SUBCHAPTER C. PENALTIES

2 Revised Law

3 Sec. 403.101. PENALTIES. (a) The department may revoke
4 the charter of an insurer organized under the laws of this state
5 that pays a dividend in violation of Sections 403.001 and 403.051.
6 If the department revokes an insurer's charter under this
7 subsection, the department shall immediately revoke the insurer's
8 certificate of authority.

9 (b) Not later than the 10th day before the date on which the
10 department intends to revoke an insurer's certificate of authority
11 under this section, the department shall give the insurer written
12 notice of the department's intent. The notice must include the
13 specific reasons for the revocation. (V.T.I.C. Art. 21.31 (part).)

14 Source Law

15 Art. 21.31. [It shall not be lawful for any
16 insurance company organized under the laws of this
17 State to make any dividend, except from surplus
18 profits arising from its business. . . .] Any
19 dividends made contrary to any provision of this
20 article shall subject the company making them to a
21 forfeiture of its charter; and the Board shall
22 forthwith revoke its certificate of authority. The
23 Board shall give such company at least ten (10) days'
24 notice in writing of its intention to revoke such
25 certificate, stating specifically the reasons why it
26 intends to revoke same.

27 Revisor's Note

28 (1) V.T.I.C. Article 21.31 states that
29 dividends made contrary to any provision of this
30 chapter "subject the company making them to a
31 forfeiture of its charter" and "the Board shall
32 forthwith revoke its certificate of authority." The
33 revised law clarifies that the Texas Department of
34 Insurance shall revoke an insurer's certificate of
35 authority if the department revokes the insurer's
36 charter under this section.

37 (2) V.T.I.C. Article 21.31 requires the Texas
38 Department of Insurance to revoke an insurer's
39 certificate of authority "forthwith" in certain

1 circumstances. The revised law substitutes
2 "immediately" for "forthwith" because the terms have
3 the same meaning in this context and "immediately" is
4 more modern.

5 Revised Law

6 Sec. 403.102. PENALTIES FOR CERTAIN INSURERS. The
7 department may revoke the charter of a life, health, fire, marine,
8 or inland marine insurance company organized under the laws of this
9 state that pays a dividend in violation of Sections 403.001 and
10 403.052. If the department revokes a company's charter under this
11 section, the department shall immediately revoke the company's
12 certificate of authority. (V.T.I.C. Art. 21.32 (part).)

13 Source Law

14 Art. 21.32. [No life, health, fire, marine, or
15 inland insurance company, organized under the laws of
16 this state, shall make any dividend except from the
17 surplus profits arising from its business. . . .] Any
18 dividend made contrary to any provision of this
19 Article shall subject the company making it to a
20 forfeiture of its charter, and the Board shall
21 forthwith revoke its certificate of authority.

22 Revisor's Note

23 (1) V.T.I.C. Article 21.32 specifies certain
24 penalties for a "life, health, fire, marine, or inland
25 insurance company, organized under the laws of this
26 state" that pays a dividend in violation of Article
27 21.32. V.T.I.C. Article 21.31, revised in relevant
28 part in this chapter as Section 403.101, provides the
29 same penalties for an "insurance company organized
30 under the laws of this State" that pays a dividend in
31 violation of Article 21.31, but further requires that
32 the Texas Department of Insurance provide notice to
33 the insurer before imposing the penalties. Because a
34 "life, health, fire, marine, or inland insurance
35 company, organized under the laws of this state"
36 referenced in Article 21.32 is also an "insurance
37 company organized under the laws of this state" to

which Article 21.31 applies, it is ambiguous whether Article 21.32 is an exception to Article 21.31 for the companies to which Article 21.32 applies, or whether both Articles 21.31 and 21.32 apply to those companies. The revised law is drafted to preserve that ambiguity.

(2) V.T.I.C. Article 21.32 states that a dividend made contrary to any provision of this chapter "subject the company making it to a forfeiture of its charter" and "the Board shall forthwith revoke its certificate of authority." The revised law clarifies that the Texas Department of Insurance shall revoke a specified insurance company's certificate of authority only if the department revokes the company's charter.

(3) V.T.I.C. Article 21.32 requires the Texas Department of Insurance to revoke a specified insurance company's certificate of authority "forthwith" in certain circumstances. For the reason stated in Revisor's Note (2) to Section 403.101, the revised law substitutes "immediately" for "forthwith."

CHAPTER 404. FINANCIAL CONDITION

SUBCHAPTER A. HAZARDOUS FINANCIAL CONDITION

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[Sections 404.007-404.050 reserved for expansion]

SUBCHAPTER B. IMPAIRMENT OF STOCK OR SURPLUS

Sec. 404.051. IMPAIRMENT PROHIBITED 97

1 hospital service companies, health maintenance
2 organizations, risk retention groups, and all other
3 organizations, corporations, or persons transacting
4 an insurance business,

5 Revisor's Note

6 (1) Section 1(a), V.T.I.C. Article 1.32,
7 provides that "'[i]nsurer' shall include but not be
8 limited to" certain entities. The revised law omits
9 "but not be limited to" as unnecessary because Section
10 311.005(13), Government Code (Code Construction Act),
11 applicable to the revised law, and Section
12 312.011(19), Government Code, provide that "includes"
13 and "including" are terms of enlargement and not of
14 limitation and do not create a presumption that
15 components not expressed are excluded.

16 (2) Section 1(a), V.T.I.C. Article 1.32, refers
17 to "capital stock companies," "Lloyds associations,"
18 "state-wide assessment associations," "local mutual
19 aids," "county and farm mutual associations,"
20 "stipulated premium insurance companies," and "group
21 hospital service companies." For consistency with
22 terminology used in this code, the revised law
23 substitutes "capital stock insurance company" for
24 "capital stock companies," "Lloyd's plan" for "Lloyds
25 associations," "statewide mutual assessment company"
26 for "state-wide assessment associations," "local
27 mutual aid association" for "local mutual aids,"
28 "county mutual insurance company" and "farm mutual
29 insurance company" for "county and farm mutual
30 associations," "stipulated premium company" for
31 "stipulated premium insurance companies," and "group
32 hospital service corporation" for "group hospital
33 service companies."

34 (3) Section 1(a), V.T.I.C. Article 1.32, refers
35 to "trust companies organized under the provisions of
36 Chapter 7 of the Texas Insurance Code of 1951, as

1 amended." Before 1957, trust companies were organized
2 and regulated under V.T.I.C. Chapter 7. Chapter 388,
3 Acts of the 55th Legislature, Regular Session, 1957,
4 repealed V.T.I.C. Chapter 7, as it existed at that
5 time, and the Texas Department of Insurance no longer
6 regulates any trust companies. Trust companies are
7 currently regulated by the Texas Department of Banking
8 under Chapter 181, Finance Code. Accordingly, the
9 revised law omits the reference to trust companies
10 organized under V.T.I.C. Chapter 7.

11 (4) Section 1(a), V.T.I.C. Article 1.32, refers
12 to "organizations, corporations, or persons
13 transacting an insurance business." The revised law
14 omits the reference to "corporations" as unnecessary
15 because "organization" includes a corporation.

16 (5) Sections (1)(b) and (c), V.T.I.C. Article
17 1.32, define "board" and "commissioner." The revised
18 law omits those definitions as unnecessary. Chapter
19 685, Acts of the 73rd Legislature, Regular Session,
20 1993, abolished the State Board of Insurance and
21 transferred that board's functions to the commissioner
22 of insurance and the Texas Department of Insurance.
23 Throughout this chapter, references to the board have
24 been changed appropriately. The definition of
25 "commissioner" is unnecessary because Section 31.001
26 of this code defines "commissioner" as the
27 commissioner of insurance for purposes of this code.
28 The omitted law reads:

29 (b) "Board" means the State Board of
30 Insurance of Texas.

31 (c) "Commissioner" means the
32 Commissioner of Insurance of Texas.

33 Revised Law

34 Sec. 404.002. APPLICABILITY OF SUBCHAPTER. This subchapter
35 applies to a person or organization engaged in the business of

1 insurance without regard to whether the person or organization is
2 listed in Section 404.001, unless another statute specifically
3 cites this subchapter and exempts the person or organization from
4 this subchapter. (V.T.I.C. Art. 1.32, Sec. 1(a) (part).)

5 Source Law

6 (a) ["Insurer" shall include . . . all other
7 organizations, corporations, or persons transacting
8 an insurance business,] whether or not named above,
9 unless such insurers are by statute specifically, by
10 naming this article, exempted from the operation of
11 this article.

12 Revised Law

13 Sec. 404.003. ORDER TO REMEDY CONDITION. (a) If the
14 financial condition of an insurer, when reviewed as provided by
15 Subsection (b), indicates a condition that might make the insurer's
16 continued operation hazardous to the insurer's policyholders or
17 creditors or to the public, the commissioner may, after notice and
18 hearing, order the insurer to take action reasonably necessary to
19 remedy the condition.

20 (b) The insurer's financial condition must be reviewed
21 under Subsection (a) in conjunction with one or more of the
22 following:

- 23 (1) the kinds and nature of risks insured;
24 (2) the loss experience and ownership of the insurer;
25 (3) the ratio of total annual premium and net
26 investment income to commission expenses, general insurance
27 expenses, policy benefits paid, and required policy reserve
28 increases;
29 (4) the insurer's method of operation, affiliations,
30 or investments;
31 (5) any contracts that lead or may lead to contingent
32 liability; or
33 (6) agreements in respect to guaranty and surety.

34 (c) In an order issued under Subsection (a), the
35 commissioner may take any action the commissioner considers
36 reasonably necessary to remedy the condition described by

1 Subsection (a), including:

2 (1) requiring an insurer to:

3 (A) reduce the total amount of present and
4 potential liability for policy benefits by reinsurance;

5 (B) reduce the volume of new business accepted;

6 (C) suspend or limit writing new business for a
7 period;

8 (D) reduce general insurance and commission
9 expenses by specified methods; or

10 (E) increase the insurer's capital and surplus by
11 contribution; or

12 (2) suspending or canceling the insurer's certificate
13 of authority.

14 (d) The commissioner may use the remedies available under
15 Subsection (c) in conjunction with the provisions of Chapter 83 if
16 the commissioner determines that the financial condition of the
17 insurer is hazardous and can be reasonably expected to cause
18 significant and imminent harm to the insurer's policyholders or the
19 public. (V.T.I.C. Art. 1.32, Sec. 2.)

20 Source Law

21 Sec. 2. Whenever the financial condition of an
22 insurer when reviewed in conjunction with the kinds
23 and nature of risks insured, the loss experience and
24 ownership of the insurer, the ratio of total annual
25 premium and net investment income to commission
26 expenses, general insurance expenses, policy benefits
27 paid, and required policy reserve increases, its
28 method of operation, its affiliations, its
29 investments, any contracts which lead or may lead to
30 contingent liability, or agreements in respect to
31 guaranty and surety, indicate a condition such that
32 the continued operation of the insurer might be
33 hazardous to its policyholders, creditors, or the
34 general public, then the commissioner may, after
35 notice and hearing, order the insurer to take such
36 action as may be reasonably necessary to rectify the
37 existing condition, including but not necessarily
38 limited to one or more of the following steps:

39 (a) reduce the total amount of present and
40 potential liability for policy benefits by
41 reinsurance;

42 (b) reduce the volume of new business
43 being accepted;

44 (c) reduce general insurance and
45 commission expenses by specified methods;

46 (d) suspend or limit the writing of new
47 business for a period of time;

1 (e) increase the insurer's capital and
2 surplus by contribution; or
3 (f) suspend or cancel the certificate of
4 authority. The commissioner may use the remedies
5 available under this section in conjunction with the
6 provisions of Article 1.10A of this code when the
7 commissioner determines that the financial condition
8 of the insurer is hazardous and can be reasonably
9 expected to cause significant and imminent harm to it
10 policyholders or the general public.

11 Revisor's Note

12 Section 2, V.T.I.C. Article 1.32, states that the
13 commissioner of insurance may order an insurer to take
14 any action "as may be reasonably necessary" to remedy
15 the insurer's hazardous financial condition,
16 "including but not necessarily limited to" certain
17 listed actions. The revised law omits the reference to
18 "but not necessarily limited to" for the reason stated
19 in Revisor's Note (1) to Section 404.001.

20 Revised Law

21 Sec. 404.004. CONSTRUCTION WITH LAW RELATING TO CAPITAL AND
22 SURPLUS. The commissioner's authority under Section 404.003 to
23 require an increase in an insurer's capital and surplus by
24 contribution, and any capital and surplus requirements imposed by
25 the commissioner under that section, prevail over:

26 (1) the capital and surplus requirements of:

27 (A) Sections 822.054, 822.201-822.203, 822.205,
28 822.210-822.212, 841.054, 841.201, 841.204, 841.205, 841.207,
29 884.206, 884.308, and 884.309; and

30 (B) Subchapter G, Chapter 841;

31 (2) any other provision of this code or other law
32 establishing capital and surplus requirements for insurers; and

33 (3) any rule adopted under a law described by
34 Subdivision (1) or (2). (V.T.I.C. Art. 1.32, Sec. 2A.)

35 Source Law

36 Sec. 2A. The commissioner's authority under
37 Section 2 of this article to require an increase in an
38 insurer's capital and surplus by contribution prevails
39 over the capital and surplus requirements of Articles
40 2.01, 2.02, 2.20, 3.02, and 22.13 of this code, over
41 any other article of this code or other law
42 establishing capital and surplus requirements for

1 insurers, or any rules adopted under those articles or
2 laws, and in the event of any conflict between capital
3 and surplus requirements imposed by the commissioner
4 under Section 2 of this article and capital and surplus
5 requirements imposed under Articles 2.01, 2.02, 2.20,
6 3.02, or 22.13 of this code, any other article of this
7 code or other law establishing capital and surplus
8 requirements for insurers, or any rules adopted under
9 those articles or laws, the capital and surplus
10 requirements imposed by the commissioner under Section
11 2 of this article prevail.

12 Revisor's Note

13 Section 2A, V.T.I.C. Article 1.32, refers to the
14 capital and surplus requirements of V.T.I.C. Articles
15 2.01, 2.02, 2.20, 3.02, and 22.13. The portions of
16 these articles pertaining to the amount or form of
17 capital and surplus required were revised by Chapter
18 1419, Acts of the 77th Legislature, Regular Session,
19 2001, as Sections 822.054, 822.201-822.203, 822.205,
20 822.210-822.212, 841.054, 841.201, 841.204, 841.205,
21 841.207, 884.206, 884.308, and 884.309 and Subchapter
22 G, Chapter 841, of this code. The revised law is
23 drafted accordingly.

24 Revised Law

25 Sec. 404.005. STANDARDS AND CRITERIA FOR EARLY
26 WARNING. (a) The commissioner by rule may:

27 (1) establish uniform standards and criteria for early
28 warning that the continued operation of an insurer might be
29 hazardous to the insurer's policyholders or creditors or to the
30 public; and

31 (2) establish standards for evaluating the financial
32 condition of an insurer.

33 (b) Standards established by the commissioner under this
34 section must be consistent with the purposes of Section 404.003.
35 (V.T.I.C. Art. 1.32, Sec. 3.)

36 Source Law

37 Sec. 3. The board is authorized, by rule and
38 regulations, to fix uniform standards and criteria for
39 early warning that the continued operation of an
40 insurer might be hazardous to its policyholders,
41 creditors, or the general public, and to fix standards
42 for evaluating the financial condition of an insurer,

1 which standards shall be consistent with the purposes
2 expressed in Section 2 of this article.

3 Revisor's Note

4 Section 3, V.T.I.C. Article 1.32, refers to
5 certain standards and criteria established by "rule
6 and regulations." The revised law omits the reference
7 to "regulations" because under Section 311.005(5),
8 Government Code (Code Construction Act), a rule is
9 defined to include a regulation. That definition
10 applies to the revised law.

11 Revised Law

12 Sec. 404.006. AGREEMENT WITH ANOTHER JURISDICTION. The
13 commissioner may enter into an agreement with the insurance
14 regulatory authority of another jurisdiction concerning the
15 management, volume of business, expenses of operation, plans for
16 reinsurance, rehabilitation, or reorganization, and method of
17 operations of, and type of risks to be insured by, an insurer that
18 is:

19 (1) licensed in the other jurisdiction; and

20 (2) considered to be in a hazardous financial
21 condition or in need of a specific remedy that may be imposed by the
22 commissioner and the insurance regulatory authority of the other
23 jurisdiction. (V.T.I.C. Art. 1.32, Sec. 4.)

24 Source Law

25 Sec. 4. The commissioner is authorized to enter
26 into arrangements or agreements with the insurance
27 regulatory authorities of other jurisdictions
28 concerning the management, volume of business, type of
29 risks to be insured, expenses of operation, plans for
30 reinsurance, rehabilitation, or reorganization, and
31 method of operations of an insurer that is licensed in
32 such other jurisdictions and that is deemed to be in a
33 hazardous financial condition or in need of specific
34 remedies which may be imposed by the commissioner and
35 insurance regulatory authorities of such other
36 jurisdictions.

37 Revisor's Note

38 Section 4, V.T.I.C. Article 1.32, refers to
39 "arrangements or agreements." The revised law omits
40 the reference to "arrangements" as unnecessary because

1 "agreement" includes an arrangement.

2 Revisor's Note
3 (End of Subchapter)

4 The revised law omits as unnecessary Section 5,
5 V.T.I.C. Article 1.32, relating to the cumulative
6 effect of that article. An accepted general principle
7 of statutory construction requires a statute to be
8 given cumulative effect with other statutes unless the
9 statute provides otherwise or unless the statutes are
10 in conflict. The general principle applies to this
11 revision. The omitted law reads:

12 Sec. 5. Authority granted by the
13 provisions of this article is in addition to
14 other provisions of law and not in
15 substitution, restriction, or diminution
16 thereof.

17 [Sections 404.007-404.050 reserved for expansion]

18 SUBCHAPTER B. IMPAIRMENT OF STOCK OR SURPLUS

19 Revised Law

20 Sec. 404.051. IMPAIRMENT PROHIBITED. (a) The impairment
21 of the capital stock of a stock insurance company is prohibited.

22 (b) Impairment of the following surpluses in excess of that
23 provided by Section 404.053 is prohibited:

24 (1) the surplus of a stock insurance company; or

25 (2) the minimum required aggregate surplus of a:

26 (A) mutual company;

27 (B) Lloyd's plan; or

28 (C) reciprocal or interinsurance exchange.

29 (V.T.I.C. Art. 1.10, Sec. 5 (part).)

30 Source Law

31 Sec. 5. When a Company's Surplus is Impaired.
32 No impairment of the capital stock of a stock company
33 shall be permitted. No impairment of the surplus of a
34 stock company, or of the minimum required aggregate
35 surplus of a mutual, Lloyd's, or reciprocal insurer,
36 shall be permitted in excess of that provided by this
37 section. . . .

38 Revisor's Note

39 Section 5, V.T.I.C. Article 1.10, refers to a

1 "stock company" and a "mutual, Lloyd's, or reciprocal
2 insurer." For consistency with terminology used in
3 this code, the revised law substitutes "stock
4 insurance company" for "stock company," "mutual
5 company" for "mutual . . . insurer," "Lloyd's plan"
6 for "Lloyd's . . . insurer," and "reciprocal or
7 interinsurance exchange" for "reciprocal insurer."

8 Revised Law

9 Sec. 404.052. DETERMINATION OF IMPAIRMENT. (a) When
10 determining under this subchapter whether the surplus or the
11 minimum required aggregate surplus of an insurer is impaired, the
12 commissioner shall charge against the insurer:

13 (1) the reinsurance reserve required by the laws of
14 this state; and

15 (2) all other debts and claims against the insurer.

16 (b) This section does not apply to a life insurance company.
17 (V.T.I.C. Art. 1.10, Sec. 5 (part).)

18 Source Law

19 Sec. 5. . . . Having charged against a company
20 other than a life insurance company, the reinsurance
21 reserve, as prescribed by the laws of this State, and
22 adding thereto all other debts and claims against the
23 company, the Commissioner shall . . . [if it is
24 determined that the surplus required by Section
25 822.054, 822.202, 822.203, 822.205, 822.210, 822.211,
26 or 822.212 . . . is impaired . . . or . . . the
27 required aggregate surplus . . . is impaired . . . the
28 Commissioner shall order the company to remedy the
29 impairment]

30 Revised Law

31 Sec. 404.053. REMEDY FOR IMPAIRMENT. (a) The
32 commissioner shall order an insurer to remedy an impairment of the
33 insurer's surplus, aggregate surplus, or aggregate of guaranty fund
34 and surplus, as applicable, by bringing the surplus to an
35 acceptable level specified by the commissioner, or to cease
36 engaging in business in this state, if the commissioner determines
37 that:

38 (1) the surplus required by Section 822.054, 822.202,
39 822.203, 822.205, 822.210, 822.211, or 822.212 of a stock insurance

1 company engaged in the kind of insurance business described by the
2 company's certificate of authority:

3 (A) is impaired by more than 50 percent; or

4 (B) is less than the minimum level of surplus
5 required by risk-based capital and surplus rules adopted by the
6 commissioner; or

7 (2) the required aggregate of guaranty fund and
8 surplus of a Lloyd's plan, or the required aggregate surplus of a
9 reciprocal or interinsurance exchange or of a mutual company, other
10 than a life insurance company, engaged in the kind of insurance
11 business described by the insurer's certificate of authority:

12 (A) is impaired by more than 25 percent; or

13 (B) is less than the minimum level of surplus
14 required by risk-based capital and surplus rules adopted by the
15 commissioner.

16 (b) After issuing an order described by Subsection (a), the
17 commissioner shall immediately institute any proceeding necessary
18 to determine what further actions the commissioner will take in
19 relation to the matter. (V.T.I.C. Art. 1.10, Sec. 5 (part).)

20 Source Law

21 Sec. 5. . . . the Commissioner shall, (i) if it
22 is determined that the surplus required by Section
23 822.054, 822.202, 822.203, 822.205, 822.210, 822.211,
24 or 822.212 of this code of a stock company doing the
25 kind or kinds of insurance business set out in its
26 Certificate of Authority is impaired to the extent of
27 more than fifty (50%) per cent of the required surplus
28 for a capital stock insurance company, or is less than
29 the minimum level of surplus required by Commissioner
30 promulgated risk-based capital and surplus
31 regulations, or (ii) if it is determined that the
32 required aggregate surplus of a reciprocal or mutual
33 company, or the required aggregate of guaranty fund
34 and surplus of a Lloyd's company, other than a life
35 insurance company, doing the kind or kinds of
36 insurance business set out in its Certificate of
37 Authority is impaired to the extent of more than
38 twenty-five per cent (25%) of the required aggregate
39 surplus, or is less than the minimum level of surplus
40 required by Commissioner promulgated risk-based
41 capital and surplus regulations, the Commissioner
42 shall order the company to remedy the impairment of
43 surplus to acceptable levels specified by the
44 Commissioner or to cease to do business within this
45 State. The Commissioner shall thereupon immediately
46 institute such proceedings as may be necessary to
47 determine what further actions shall be taken in the

case.

Revisor's Note

(1) Section 5, V.T.I.C. Article 1.10, refers to a "stock company," "reciprocal . . . company," and "Lloyd's company." For consistency with terminology used in this code, the revised law substitutes "stock insurance company" for "stock company," "reciprocal or interinsurance exchange" for "reciprocal . . . company," and "Lloyd's plan" for "Lloyd's company."

(2) Section 5, V.T.I.C. Article 1.10, refers to "regulations." The revised law substitutes "rules" for "regulations" because "rules" is the term more commonly used and is the term used by Chapter 2001, Government Code (Administrative Procedure Act). Also, under Section 311.005(5), Government Code (Code Construction Act), applicable to the revised law, a rule is defined to include a regulation. That definition applies to the revised law.

(3) Section 5(ii), V.T.I.C. Article 1.10, which applies to a reciprocal or interinsurance exchange, a mutual company, and a Lloyd's plan, provides an exemption from the operation of Section 5(ii) for a life insurance company. For clarity, the revised law limits the application of the exemption to a mutual company because neither a reciprocal or interinsurance exchange nor a Lloyd's plan is authorized to engage in the business of life insurance in this state.

[Chapters 405-420 reserved for expansion]

SUBTITLE B. RESERVES AND INVESTMENTS

CHAPTER 421. RESERVES IN GENERAL

Sec. 421.001. RESERVES REQUIRED 101

Sec. 421.002. CERTIFICATES FROM OTHER STATES 102

1 CHAPTER 421. RESERVES IN GENERAL

2 Revised Law

3 Sec. 421.001. RESERVES REQUIRED. (a) An insurer shall
4 maintain reserves in an amount estimated in the aggregate to
5 provide for the payment of all losses or claims for which the
6 insurer may be liable and that are:

7 (1) incurred on or before the date of statement,
8 whether reported or unreported; and

9 (2) unpaid as of the date of statement.

10 (b) In addition to the reserves required by Subsection (a),
11 an insurer shall maintain reserves in an amount estimated to
12 provide for the expenses of adjustment or settlement of the losses
13 or claims described by that subsection.

14 (c) The commissioner shall adopt each current formula
15 recommended by the National Association of Insurance Commissioners
16 for establishing reserves for each line of insurance. Each insurer
17 writing a line of insurance to which a formula adopted under this
18 subsection applies shall establish reserves in compliance with that
19 formula. (V.T.I.C. Art. 21.39.)

20 Source Law

21 Art. 21.39. Every insurer shall maintain
22 reserves in an amount estimated in the aggregate to
23 provide for the payment of all losses or claims
24 incurred on or prior to the date of statement, whether
25 reported or unreported, which are unpaid as of such
26 date and for which such insurer may be liable, and also
27 reserves in an amount estimated to provide for the
28 expenses of adjustment or settlement of such claims.
29 The Board of Insurance Commissioners shall adopt each
30 current formula for establishing reserves applicable
31 to each line of insurance recommended by the National
32 Association of Insurance Commissioners and all
33 companies writing the line of insurance to which each
34 such adopted formula is applicable shall establish
35 reserves in compliance therewith.

36 Revisor's Note

37 (1) V.T.I.C. Article 21.39 refers to expenses of
38 adjustment or settlement of "such claims." The
39 revised law substitutes "losses or claims" for "such
40 claims" for consistency with other terminology in the
41 article.

1 (2) V.T.I.C. Article 21.39 refers to the "Board
2 of Insurance Commissioners." Under Chapter 499, Acts
3 of the 55th Legislature, Regular Session, 1957,
4 administration of the insurance laws of this state was
5 reorganized and the powers and duties of the Board of
6 Insurance Commissioners were transferred to the State
7 Board of Insurance. Chapter 685, Acts of the 73rd
8 Legislature, Regular Session, 1993, abolished the
9 State Board of Insurance and transferred its functions
10 to the commissioner of insurance and the Texas
11 Department of Insurance. Throughout this chapter,
12 references to the Board of Insurance Commissioners or
13 the "Board" have been changed appropriately.

14 Revised Law

15 Sec. 421.002. CERTIFICATES FROM OTHER STATES. In
16 computing the reserve liability of an insurer, the commissioner may
17 accept the certificate of the officer of another state charged with
18 the duty of supervising the insurer if:

19 (1) the insurer is organized under the laws of the
20 other state; and

21 (2) the certificate shows that the reserve liability
22 has been computed in accordance with Section 421.001. (V.T.I.C.
23 Art. 21.40.)

24 Source Law

25 Art. 21.40. The Board, in calculating the
26 reserve liability of any such company, may accept the
27 certificate of the officer of any other state charged
28 with the duty of supervising such company as to any
29 such company organized under the laws of such state;
30 provided, such certificate shows that such liability
31 has been computed in accordance with the provisions of
32 Article 21.39 of this code.

33 Revisor's Note

34 V.T.I.C. Article 21.40 refers to "any such
35 company" and "such company." The revised law
36 substitutes "insurer" for those references for clarity
37 and consistency of terminology in this chapter. In

1 context, it is clear that the quoted text in Article
2 21.40 is intended to refer to the entities for which
3 reserve requirements are established by V.T.I.C.
4 Article 21.39, revised in this chapter as Section
5 421.001. Article 21.39, as enacted by Chapter 491,
6 Acts of the 52nd Legislature, Regular Session, 1951,
7 referred to "every insurance company" that provided
8 certain coverage for at least 10 years. The article
9 was amended by Chapter 117, Acts of the 54th
10 Legislature, Regular Session, 1955, to refer to "every
11 insurer" without additional qualification. The
12 revised law in this section is drafted accordingly.

13 CHAPTER 422. ASSET PROTECTION ACT

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 422.001. SHORT TITLE 103
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22 SUBCHAPTER B. ENCUMBRANCE OF ASSETS

23 Sec. 422.051. RESTRICTIONS ON ENCUMBRANCE OF ASSETS 111
24 Sec. 422.052. REPORT TO COMMISSIONER 113
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27 CHAPTER 422. ASSET PROTECTION ACT

28 SUBCHAPTER A. GENERAL PROVISIONS

29 Revised Law

30 Sec. 422.001. SHORT TITLE. This chapter may be cited as
31 the Asset Protection Act. (V.T.I.C. Art. 21.39-A, Sec. 1.)

32 Source Law

33 Art. 21.39-A
34 Sec. 1. This article shall be known and may be
35 cited as the Asset Protection Act.

1 Revised Law

2 Sec. 422.002. PURPOSES. (a) The purposes of this chapter
3 are to:

4 (1) require an insurer to maintain unencumbered assets
5 in an amount equal to the insurer's reserve liabilities;

6 (2) provide preferential claims against assets in
7 favor of an owner, beneficiary, assignee, certificate holder, or
8 third-party beneficiary of an insurance policy; and

9 (3) prevent the pledge or encumbrance of assets in
10 excess of certain amounts without a prior written order of the
11 commissioner.

12 (b) This chapter and the powers granted and functions
13 authorized by this chapter shall be exercised to accomplish the
14 purposes of this chapter. (V.T.I.C. Art. 21.39-A, Secs. 2, 6
15 (part).)

16 Source Law

17 Sec. 2. This Act is for the purpose of requiring
18 insurers to have and maintain unencumbered assets in
19 an amount equal to reserve liabilities; to provide
20 preferential claims against assets in favor of owners,
21 beneficiaries, assignees, certificate holders, or
22 third party beneficiaries of insurance policies; and
23 to prevent the hypothecation or encumbrance of assets
24 in excess of certain amounts without prior written
25 order of the Commissioner of Insurance.

26 Sec. 6. The provisions of this Act and the
27 powers and functions authorized by this Act are to be
28 exercised to the end that its purposes be
29 accomplished. . . .

30 Revisor's Note

31 (1) Section 2, V.T.I.C. Article 21.39-A,
32 provides that a purpose of the article is to require an
33 insurer to "have and maintain" unencumbered assets in
34 a certain amount. The revised law omits "have" as
35 unnecessary because an insurer that maintains assets
36 must necessarily have the assets.

37 (2) Section 2, V.T.I.C. Article 21.39-A,
38 provides that a purpose of the article is to prevent
39 the "hypothecation or encumbrance" of certain assets.

1 "Hypothecation" of an asset is a form of a pledge.
2 Subsequent provisions in the article refer to the
3 "pledge" of assets, clearly indicating that a purpose
4 of the article is to prevent the "pledge" of assets,
5 not just the more narrow "hypothecation" of assets.
6 For clarity and consistency of terminology throughout
7 this chapter, the revised law substitutes "pledge" for
8 "hypothecation."

9 (3) Section 2, V.T.I.C. Article 21.39-A, refers
10 to the "commissioner of insurance." Section 31.001 of
11 this code defines "commissioner" for purposes of this
12 code and the other insurance laws of this state to mean
13 the commissioner of insurance. Throughout this
14 chapter, the revised law is drafted accordingly.

15 Revised Law

16 Sec. 422.003. DEFINITIONS. In this chapter:

17 (1) "Asset" means any property in which an insurer
18 owns a legal or equitable interest.

19 (2) "Claimant" means an owner, beneficiary, assignee,
20 certificate holder, or third-party beneficiary of an insurance
21 benefit or right arising from the coverage of an insurance policy to
22 which this chapter applies.

23 (3) "Reserve assets" means the assets of an insurer
24 that are authorized investments for policy reserves under this
25 code.

26 (4) "Reserve liabilities" means the liabilities that
27 an insurer is required under this code to establish for all of the
28 insurer's outstanding insurance policies. (V.T.I.C. Art. 21.39-A,
29 Sec. 4.)

30 Source Law

31 Sec. 4. As used in this Act:

32 1. "Reserve liabilities" are those
33 liabilities which are required to be established by
34 the insurer for all of its outstanding insurance
35 policies in accordance with the Insurance Code, as
36 amended or as hereafter amended;

37 2. "Reserve assets" are those assets of an

insurer which are authorized investments for policy reserves in accordance with the Insurance Code, as amended or as hereafter amended;

3. "Assets" are all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer;

4. "Claimants" are any owners, beneficiaries, assignees, certificate holders, or third party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Act.

Revisor's Note

(1) Section 4, V.T.I.C. Article 21.39-A, defines "assets" to include "real or personal, tangible or intangible" property. The revised law omits the reference to "real or personal" because under Section 311.005(4), Government Code (Code Construction Act), "property" includes both real and personal property. That definition applies to the revised law. The revised law omits the reference to "tangible or intangible" as unnecessary because property may only be tangible or intangible.

(2) Section 4, V.T.I.C. Article 21.39-A, refers to the Insurance Code, "as amended or as hereafter amended." The revised law omits the quoted language because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, or amendments of the statute unless expressly provided otherwise.

Revised Law

Sec. 422.004. APPLICABILITY OF CHAPTER. This chapter applies to:

(1) the following domestic insurers:

(A) a stock life, health, or accident insurance company;

(B) a mutual life, health, or accident insurance company;

(C) a stock fire or casualty insurance company;

- (D) a mutual fire or casualty insurance company;
(E) a title insurance company;
(F) a mutual assessment company;
(G) a local mutual aid association;
(H) a local mutual burial association;
(I) a statewide mutual assessment company;
(J) a stipulated premium company;
(K) a fraternal benefit society;
(L) a group hospital service corporation;
(M) a county mutual insurance company;
(N) a Lloyd's plan;
(O) a reciprocal or interinsurance exchange;
(P) a farm mutual insurance company; and
(Q) a mortgage guaranty insurer; and

(2) all kinds of insurance written by an insurer to which this chapter applies. (V.T.I.C. Art. 21.39-A, Sec. 3 (part).)

Source Law

Sec. 3. This Act shall apply to all of the following types of domestic insurance companies and to all kinds of insurance written by such companies; and where used herein "insurer" shall mean: all domestic stock and mutual life, health and accident, fire, casualty, fire and casualty and title insurance companies, including mutual assessment companies, local mutual aid associations, local mutual burial associations, Statewide mutual assessment companies, stipulated premium insurance companies, fraternal benefit societies, group hospital service insurance companies, county mutual insurance companies, Lloyd's and reciprocal exchanges, farm mutual companies, and mortgage guaranty insurance companies. . . .

Revisor's Note

(1) Section 3, V.T.I.C. Article 21.39-A, lists insurers to which the article applies and states that "where used herein 'insurer' shall mean" those listed insurers. The revised law omits the quoted language as unnecessary. Because the section specifies the types of insurers to which this chapter applies, the defined term is not helpful to the reader.

1 (2) Section 3, V.T.I.C. Article 21.39-A, refers
2 to "stipulated premium insurance companies," "group
3 hospital service insurance companies," a "Lloyd's,"
4 "reciprocal exchanges," "farm mutual companies," and
5 "mortgage guaranty insurance companies," meaning
6 entities operating under Chapter 884, 842, 941, 942,
7 911, or 3502, respectively. The terms most frequently
8 used to refer to those entities are "stipulated
9 premium company," "group hospital service
10 corporation," "Lloyd's plan," "reciprocal or
11 interinsurance exchange," "farm mutual insurance
12 company," and "mortgage guaranty insurer." For
13 consistent use of terminology in this code, the
14 revised law substitutes "stipulated premium company,"
15 "group hospital service corporation," "Lloyd's plan,"
16 "reciprocal or interinsurance exchange," "farm mutual
17 insurance company," and "mortgage guaranty insurer"
18 for "stipulated premium insurance companies," "group
19 hospital service insurance companies," a "Lloyd's,"
20 "reciprocal exchanges," "farm mutual companies," and
21 "mortgage guaranty insurance companies,"
22 respectively.

23 Revised Law

24 Sec. 422.005. EXEMPTIONS. (a) This chapter does not
25 apply to:

26 (1) variable contracts for which separate accounts are
27 required to be maintained;

28 (2) a reinsurance agreement or any trust account
29 related to the reinsurance agreement if the agreement and trust
30 account meet the requirements of Chapter 492 or 493;

31 (3) an assessment-as-needed company or insurance
32 coverage written by an assessment-as-needed company;

33 (4) an insurer while:

34 (A) the insurer is subject to a conservatorship

1 order issued by the commissioner; or

2 (B) a court-appointed receiver is in charge of
3 the insurer's affairs; or

4 (5) an insurer's reserve assets that are held,
5 deposited, pledged, or otherwise encumbered to secure, offset,
6 protect, or meet the insurer's reserve liabilities established in a
7 reinsurance agreement under which the insurer reinsures the
8 insurance policy liabilities of a ceding insurer if:

9 (A) the ceding insurer and the reinsurer are
10 authorized to engage in business in this state; and

11 (B) in accordance with a written agreement
12 between the ceding insurer and the reinsurer, reserve assets
13 substantially equal to the reserve liabilities the reinsurer must
14 establish on the reinsured business are:

15 (i) deposited by or withheld from the
16 reinsurer and held in the custody of the ceding insurer, or
17 deposited and held in a trust account with a state or national bank
18 domiciled in this state, as security for the payment of the
19 reinsurer's obligations under the reinsurance agreement;

20 (ii) held subject to withdrawal by the
21 ceding insurer; and

22 (iii) held under the separate or joint
23 control of the ceding insurer.

24 (b) Notwithstanding this section, the commissioner may
25 examine any asset, reinsurance agreement, or deposit arrangement
26 described by Subsection (a)(5) at any time, in accordance with the
27 commissioner's authority under this code to examine an insurer.

28 (V.T.I.C. Art. 21.39-A, Secs. 3 (part), 3A.)

29 Source Law

30 Sec. 3. . . . This Act shall not apply to
31 variable contracts for which separate accounts are
32 required to be maintained and shall not apply to
33 assessment as needed companies nor to insurance
34 coverage written by assessment as needed companies.
35 This Act shall not apply to an insurance company while
36 subject to a conservatorship order issued by the
37 Commissioner of Insurance nor to an insurance company
38 while a court appointed receiver is in charge of its

1 affairs.

2 Sec. 3A. (a) This Act shall not apply to those
3 reserve assets of an insurer which are held,
4 deposited, pledged, hypothecated, or otherwise
5 encumbered as provided herein to secure, offset,
6 protect, or meet those reserve liabilities of such
7 insurer which are established, incurred, or required
8 under the provisions of a reinsurance agreement
9 whereby such insurer has reinsured the insurance
10 policy liabilities of a ceding insurer, provided:

11 (1) the ceding insurer and the reinsurer
12 are both licensed to transact business in this state;

13 (2) pursuant to a written agreement
14 between the ceding insurer and the reinsurer, reserve
15 assets substantially equal to the reserve liabilities
16 required to be established by the reinsurer on the
17 reinsured business are either (a) deposited by or are
18 withheld from the reinsurer and are in the custody of
19 the ceding insurer as security for the payment of the
20 reinsurer's obligations under the reinsurance
21 agreement, and such assets are held subject to
22 withdrawal by and under the separate or joint control
23 of the ceding insurer, or (b) are deposited and held in
24 a trust account for such purpose and under such
25 conditions with a state or national bank domiciled in
26 this state.

27 (b) The Commissioner of Insurance shall have the
28 right to examine any of such assets, reinsurance
29 agreements, or deposit arrangements at any time in
30 accordance with the authority to make examinations of
31 insurance companies as conferred by other provisions
32 of this code.

33 (c) This Act does not apply to a reinsurance
34 agreement or any trust account related to the
35 reinsurance agreement if the agreement and trust
36 account meet the requirements of Article 3.10 or
37 5.75-1 of this code.

38 Revisor's Note

39 (1) Section 3A(a), V.T.I.C. Article 21.39-A,
40 refers to certain assets that are "pledged,
41 hypothecated, or otherwise encumbered." Throughout
42 this chapter, the revised law omits "hypothecated" and
43 variants of that term as unnecessary where the terms
44 are used in conjunction with "pledged" and variants of
45 that term because "hypothecated" is included within
46 the meaning of "pledged."

47 (2) Section 3A(a), V.T.I.C. Article 21.39-A,
48 refers to reserve liabilities of an insurer "which are
49 established, incurred, or required under the
50 provisions of a reinsurance agreement." The revised
51 law omits the references to "incurred" and "required"
52 because, in context, the terms are included in the

1 meaning of "established."

2 (3) Section 3A(a)(1), V.T.I.C. Article 21.39-A,
3 refers to a ceding insurer and a reinsurer "licensed to
4 transact business in this state." The revised law
5 substitutes "authorized" for "licensed" because
6 "certificate of authority" is the term used throughout
7 this code in relation to an entity's authority to
8 engage in business.

9 Revised Law

10 Sec. 422.006. CONFLICT WITH OTHER LAW. If this chapter
11 conflicts with another law relating to the subject matter or
12 application of this chapter, this chapter controls. (V.T.I.C.
13 Art. 21.39-A, Sec. 6 (part).)

14 Source Law

15 Sec. 6. . . . in the event of conflict between
16 this Act and any other law relating to the subject
17 matter of this Act or its application, the provisions
18 of this Act shall control.

19 Revisor's Note

20 Section 6, V.T.I.C. Article 21.39-A, refers to
21 the cumulative effect of that article. An accepted
22 general principle of statutory construction requires a
23 statute to be given cumulative effect with other
24 statutes unless it provides otherwise or unless the
25 statutes are in conflict. The general principle
26 applies to this revision. The omitted law reads:

27 Sec. 6. . . . This Act is cumulative
28 of existing laws, but

29 [Sections 422.007-422.050 reserved for expansion]

30 SUBCHAPTER B. ENCUMBRANCE OF ASSETS

31 Revised Law

32 Sec. 422.051. RESTRICTIONS ON ENCUMBRANCE OF
33 ASSETS. (a) An insurer shall at all times maintain unencumbered
34 assets in an amount equal to the insurer's reserve liabilities.

35 (b) An insurer may not pledge or otherwise encumber:

36 (1) the insurer's assets in an amount that exceeds the

1 amount of the insurer's capital and surplus; or

2 (2) more than 10 percent of the insurer's reserve
3 assets.

4 (c) Notwithstanding any other provision of this section, on
5 application made to the commissioner, the commissioner may issue a
6 written order approving the pledge or encumbrance of an insurer's
7 asset in any amount if the commissioner determines that the pledge
8 or encumbrance will not adversely affect the insurer's solvency.
9 (V.T.I.C. Art. 21.39-A, Sec. 5 (part).)

10 Source Law

11 Sec. 5. Every insurer subject to the provisions
12 of this Act shall at all times have and maintain free
13 and unencumbered assets in an amount equal to its
14 reserve liabilities, and no such insurer shall pledge,
15 hypothecate, or otherwise encumber its assets in an
16 amount in excess of the amount of its capital and
17 surplus; nor shall such insurer pledge, hypothecate
18 or otherwise encumber more than ten per cent (10%) of
19 its reserve assets as herein defined; provided,
20 however, that the Commissioner of Insurance, upon
21 application made to him, may issue a written order
22 approving the hypothecation or encumbrance of any of
23 the assets of such an insurer in any amount upon a
24 finding that such hypothecation or encumbrance will
25 not adversely affect the solvency of such insurer.

26 . . .

27 Revisor's Note

28 (1) Section 5, V.T.I.C. Article 21.39-A,
29 requires an insurer to "have and maintain" assets in a
30 specified amount. The revised law omits the reference
31 to "have" for the reason stated in Revisor's Note (1)
32 to Section 422.002.

33 (2) Section 5, V.T.I.C. Article 21.39-A, refers
34 to insurers that are "subject to the provisions of this
35 Act." The revised law omits the quoted language as
36 superfluous because Section 3, V.T.I.C. Article
37 21.39-A, revised in relevant part in this chapter as
38 Section 422.004(1), specifies the insurers to which
39 the article applies. Similar changes have been made
40 throughout this chapter.

41 (3) Section 5, V.T.I.C. Article 21.39-A, refers

1 to the "free and unencumbered" assets of an insurer.
2 The revised law omits the reference to "free" because,
3 in context, "free" and "unencumbered" are synonymous,
4 and the latter is more commonly used.

5 Revised Law

6 Sec. 422.052. REPORT TO COMMISSIONER. (a) Not later than
7 the 10th day after the date an insurer pledges or otherwise
8 encumbers an asset, the insurer shall report in writing to the
9 commissioner:

10 (1) the amount and identity of the pledged or
11 encumbered asset; and

12 (2) the terms of the transaction.

13 (b) Annually, or more often as required by the commissioner,
14 the insurer shall file with the commissioner a statement sworn to by
15 the insurer's chief executive officer that:

16 (1) title to assets that equal the amount of the
17 insurer's reserve liabilities and that are not pledged or otherwise
18 encumbered is vested in the insurer;

19 (2) the only assets of the insurer that are pledged or
20 otherwise encumbered are those identified and reported in the sworn
21 statement, and no other assets of the insurer are pledged or
22 otherwise encumbered; and

23 (3) the terms of the transaction pledging or otherwise
24 encumbering the assets are those reported in the sworn statement.

25 (V.T.I.C. Art. 21.39-A, Sec. 5 (part).)

26 Source Law

27 Sec. 5. . . . Any such insurer which shall
28 pledge, hypothecate, or otherwise encumber any of its
29 assets shall within (10) days thereafter report in
30 writing to the Commissioner of Insurance the amount
31 and identity of the assets so pledged, hypothecated,
32 or encumbered and the terms and conditions of such
33 transaction. In addition, each such insurer shall
34 annually or more often if required by the Commissioner
35 file with the Commissioner a statement sworn to by the
36 chief executive officer of the insurer that (a) title
37 to assets in an amount equal to the reserve liability
38 of the insurer which are not pledged, hypothecated or
39 otherwise encumbered is vested in the insurer, (b) the
40 only assets of the insurer which are pledged,
41 hypothecated or otherwise encumbered are as identified

1 and reported in such sworn statement and no other
2 assets of the insurer are pledged, hypothecated or
3 otherwise encumbered, and (c) the terms and provisions
4 of any such transaction of pledge, hypothecation, or
5 encumbrance are as reported in such sworn statement.
6 . . .

7 Revisor's Note

8 Section 5, V.T.I.C. Article 21.39-A, refers to
9 "terms and conditions" and "terms and provisions" of a
10 transaction encumbering assets. The revised law omits
11 the references to "conditions" and "provisions"
12 because "conditions" and "provisions" are included in
13 the meaning of "terms."

14 Revised Law

15 Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS. (a) A
16 person, corporation, association, or other legal entity that
17 accepts as security for an insurer's debt or other obligation a
18 pledge or encumbrance of an asset of the insurer that is not made in
19 accordance with this chapter is considered to have accepted the
20 asset subject to a superior, preferential, and automatically
21 perfected lien in favor of a claimant of the insurer.

22 (b) Subsection (a) does not apply to an asset of an insurer
23 in conservatorship or receivership if the commissioner in the
24 conservatorship proceeding, or the court in which the receivership
25 is pending, approves the pledge or encumbrance of the asset.
26 (V.T.I.C. Art. 21.39-A, Sec. 5 (part).)

27 Source Law

28 Sec. 5. . . . Any person, corporation,
29 association or legal entity which accepts a pledge,
30 hypothecation or encumbrance of any asset of an
31 insurer as security for a debt or other obligation of
32 such insurer not in accordance with the terms and
33 limitations of this Act shall be deemed to have
34 accepted such asset subject to a superior,
35 preferential and automatically perfected lien in favor
36 of claimants; provided, however, that such superior,
37 preferential and automatically perfected lien in favor
38 of claimants shall not apply to assets of an insurance
39 company in conservatorship or receivership if the
40 Commissioner of Insurance, in the conservatorship
41 proceeding, or the court in which the receivership is
42 pending, approves the pledge, hypothecation or
43 encumbrance of such assets.
44 . . .

1 Revisor's Note

2 Section 5, V.T.I.C. Article 21.39-A, refers to a
3 superior lien "in favor of claimants." For clarity,
4 the revised law adds that the superior lien is in favor
5 of a claimant of the insurer that encumbers the asset
6 to secure an obligation.

7 Revised Law

8 Sec. 422.054. PREFERENTIAL CLAIMS ON LIQUIDATION. If an
9 insurer is involuntarily or voluntarily liquidated, a claimant of
10 the insurer has a prior and preferential claim against all assets of
11 the insurer other than the assets that have been pledged or
12 encumbered in accordance with this chapter. All claimants have
13 equal status, and their prior and preferential claim is superior to
14 any claim or cause of action against the insurer by any other
15 person, corporation, association, or legal entity. (V.T.I.C.
16 Art. 21.39-A, Sec. 5 (part).)

17 Source Law

18 Sec. 5. . . . In the event of involuntary or
19 voluntary liquidation of any insurer subject to this
20 Act, claimants of such insurer shall have a prior and
21 preferential claim against all assets of the insurer
22 except those which have been pledged, hypothecated or
23 encumbered in accordance with the terms and
24 limitations of this Act. All claimants shall have
25 equal status and their prior and preferential claim
26 shall be superior to any claim or cause of action
27 against the insurer by any person, corporation,
28 association or legal entity.

29 Revisor's Note
30 (End of Chapter)

31 (1) Section 7, V.T.I.C. Article 21.39-A, states
32 that the article does not apply to a person to whom it
33 cannot apply under the Texas or United States
34 constitution. Under general principles of
35 constitutional law, a Texas statute could not apply to
36 a person to whom the Texas or United States
37 constitution does not allow the law to apply.
38 Therefore, the revised law omits that provision as
39 unnecessary. The omitted law reads:

Sec. 7. This Act does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

(2) Section 8, V.T.I.C. Article 21.39-A, states that the article is severable. The section duplicates Section 311.032, Government Code (Code Construction Act), applicable to the revised law, and Section 312.013, Government Code. Those provisions state that a provision of a statute is severable from each other provision of the statute that can be given effect. Therefore, the revised law omits the provision as unnecessary. The omitted law reads:

Sec. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

CHAPTER 423. TRANSACTIONS WITH MONEY AND OTHER ASSETS

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9 CHAPTER 423. TRANSACTIONS WITH MONEY AND OTHER ASSETS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Revised Law

12 Sec. 423.001. APPLICABILITY OF CHAPTER. (a) This chapter

13 applies to a domestic insurer regulated under this code, including:

- 14 (1) a stock company;
- 15 (2) a reciprocal or interinsurance exchange;
- 16 (3) a Lloyd's plan;
- 17 (4) a fraternal benefit society;
- 18 (5) a stipulated premium company;
- 19 (6) a mutual insurance company of any kind, including:
- 20 (A) a statewide mutual assessment company;
- 21 (B) a local mutual aid association;
- 22 (C) a burial association;
- 23 (D) a county mutual insurance company; and
- 24 (E) a farm mutual insurance company; and
- 25 (7) any other organization or person engaged in the
- 26 business of insurance.

27 (b) A provision of this code limiting the regulation of an

28 insurer under this code does not limit the application of this

29 chapter, except that this chapter does not apply to an insurer that

30 is exempted from its application by another statute that cites this

31 chapter. (V.T.I.C. Art. 21.39-B, Sec. 4 (part).)

32 Source Law

33 Sec. 4. The provisions of this article are

34 applicable to all domestic insurance companies subject

35 to regulation by the Insurance Code, as amended, and

1 any provision of exemption or any provision of
2 inapplicability or applicability limiting such
3 regulation in any chapter of the code are not in
4 limitation of the provisions of this article,
5 As used herein, the term "insurance companies"
6 includes stock companies, reciprocals or
7 inter-insurance exchanges, Lloyds associations,
8 fraternal benefit societies, stipulated premium
9 companies, and mutual companies of all kinds,
10 including state-wide mutual assessment corporations,
11 local mutual aids, burial associations, and county
12 mutual insurance companies and farm mutual insurance
13 companies and all other organizations, corporations,
14 or persons transacting an insurance business, unless
15 such insurance companies are by statute specifically,
16 by naming this article, exempted from the operation of
17 this article.

18 Revisor's Note

19 (1) Section 4, V.T.I.C. Article 21.39-B, refers
20 to "reciprocals or inter-insurance exchanges,"
21 "Lloyds associations," "mutual companies,"
22 "state-wide mutual assessment corporations," and
23 "local mutual aids." The revised law substitutes
24 "reciprocal or interinsurance exchange," "Lloyd's
25 plan," "mutual insurance company," "statewide mutual
26 assessment company," and "local mutual aid
27 association" for those terms, respectively, for
28 consistent use of terminology within this code.

29 (2) Section 4, V.T.I.C. Article 21.39-B, refers
30 to "organizations, corporations, or persons." The
31 revised law omits "corporation" as included within the
32 meaning of "organization."

33 Revised Law

34 Sec. 423.002. AMBIGUITIES AND CONFLICTS WITH OTHER
35 LAW. This chapter controls to the extent of an ambiguity or a
36 conflict between this chapter and another provision of this code.
37 (V.T.I.C. Art. 21.39-B, Sec. 4 (part).)

38 Source Law

39 Sec. 4. . . . and in the event of conflict
40 between this article and any other article of the code
41 or in the event of any ambiguity, the provisions of
42 this article shall govern. . . .

43 Revised Law

44 Sec. 423.003. RULES. The commissioner may adopt rules

1 necessary to implement this chapter. (V.T.I.C. Art. 21.39-B, Sec.
2 3.)

3 Source Law

4 Sec. 3. The State Board of Insurance may
5 promulgate such regulations as may be deemed necessary
6 to carry out the provisions of this article.

7 Revisor's Note

8 Section 3, V.T.I.C. Article 21.39-B, authorizes
9 the State Board of Insurance to adopt regulations
10 necessary to implement V.T.I.C. Article 21.39-B.
11 Chapter 685, Acts of the 73rd Legislature, Regular
12 Session, 1993, abolished the board and transferred its
13 functions to the commissioner of insurance and the
14 Texas Department of Insurance. Throughout this
15 chapter, references to the board have been changed
16 appropriately. In addition, the revised law
17 substitutes "rules" for "regulations" for consistency
18 of terminology throughout this code and because under
19 Section 311.005(5), Government Code (Code
20 Construction Act), a rule is defined to include a
21 regulation. That definition applies to the revised
22 law.

23 [Sections 423.004-423.050 reserved for expansion]

24 SUBCHAPTER B. TRANSACTIONS WITH MONEY

25 Revised Law

26 Sec. 423.051. DEPOSIT AND INVESTMENT OF MONEY. A director,
27 member of a committee, officer, or clerk of a domestic insurer who
28 has the duty to handle or invest the insurer's money may not:

29 (1) invest the money other than in the corporate name
30 of the insurer, except as provided by Section 423.102;

31 (2) deposit the money unless the deposit is:

32 (A) in the corporate name of the insurer;

33 (B) in a pooling account with one or more
34 affiliates, as described by Section 823.003; or

35 (C) in accordance with a reinsurance agreement;

1 (3) borrow the insurer's money;

2 (4) have any interest in a loan, pledge, security, or

3 property of the insurer, except as a stockholder; or

4 (5) take or receive for the individual's use a fee,

5 brokerage, commission, gift, or other consideration for, or on

6 account of, a loan made by or on behalf of the insurer. (V.T.I.C.

7 Art. 21.39-B, Sec. 1 (part).)

8 Source Law

9 Sec. 1. Any director, member of a committee, or

10 officer, or any clerk of a domestic company, who is

11 charged with the duty of handling or investing its

12 funds, shall not:

13 (1) invest such funds, except in the

14 corporate name of such company, . . . ;

15 (2) deposit such funds except in the

16 corporate name of such company, or in a pooling account

17 with one or more affiliates, or in accordance with a

18 reinsurance agreement;

19 (3) borrow the funds of such company;

20 (4) be interested in any way in any loan,

21 pledge, security, or property of such company, except

22 as stockholder; or

23 (5) take or receive to his own use any fee,

24 brokerage, commission, gift, or other consideration

25 for, or on account of, a loan made by or on behalf of

26 such company.

27 Revisor's Note

28 (1) Section 1, V.T.I.C. Article 21.39-B, refers

29 to an insurer's "funds." Throughout this chapter, the

30 revised law substitutes "money" for "funds" because,

31 in context, the terms are synonymous and the former is

32 more commonly used.

33 (2) Section 1(2), V.T.I.C. Article 21.39-B,

34 refers to "affiliates." Section 2, V.T.I.C. Article

35 21.39-B, revised in pertinent part in this chapter as

36 Section 423.052(a), refers to an insurer's "affiliate,

37 as defined in Article 21.49-1 of this code." V.T.I.C.

38 Article 21.49-1 was revised in pertinent part in

39 Section 823.003 of this code. For the convenience of

40 the reader, the revised law adds a cross-reference to

41 Section 823.003 of this code because it is clear from

42 the context that the reference to "affiliates" in

Section 1(2) and the reference to an "affiliate" in Section 2 both refer to an affiliate described by Section 823.003 of this code.

Revised Law

Sec. 423.052. MONEY HELD IN POOLING ACCOUNT. (a) Only a domestic insurer and an affiliate, as described by Section 823.003, may hold money in a pooling account.

(b) The accounting and operating records and books of the insurer and affiliate must be adequately detailed to identify specific insurance policies and policyholders with the money from premiums received by the insurer that issues the policies. (V.T.I.C. Art. 21.39-B, Sec. 2 (part).)

Source Law

Sec. 2. If funds of a domestic company are deposited in a pooling account, only the domestic company and its affiliate, as defined in Article 21.49-1 of this code, may hold funds in a pooling account. The accounting and operational records and books of the companies must be adequately detailed to identify specific insurance policies and policyholders with premium funds received by the particular company issuing the insurance. . . .

Revised Law

Sec. 423.053. AUTHORITY TO DEPOSIT MONEY IN ACCOUNT OF REINSURER. A reinsurance agreement between a domestic insurer and an affiliate, as described by Section 823.003, must specifically authorize the deposit of money from premiums to the account of the affiliate that assumes the reinsurance. (V.T.I.C. Art. 21.39-B, Sec. 2 (part).)

Source Law

Sec. 2. . . . A reinsurance agreement between the domestic company and one or more affiliates must specifically authorize the deposit of premium funds to the account of the affiliate which is assuming the reinsurance.

[Sections 423.054-423.100 reserved for expansion]

SUBCHAPTER C. TRANSACTIONS WITH OTHER ASSETS

Revised Law

Sec. 423.101. DEFINITION. In this subchapter, "clearing corporation" means:

1 (1) a clearing corporation as defined by Section
2 8.102(a), Business & Commerce Code; or

3 (2) a clearance system that:

4 (A) is organized or operating under the laws of
5 at least one foreign country;

6 (B) provides for book-entry settlement and
7 custody of internationally traded securities; and

8 (C) has been organized and in operation for not
9 less than 15 consecutive years. (V.T.I.C. Art. 21.39-B, Sec.
10 5(b).)

11 Source Law

12 (b) As used in this article, a clearing
13 corporation is:

14 (1) a corporation defined in Section
15 8.102(c) of the Business & Commerce Code; or

16 (2) a clearance system that:

17 (A) is organized or operating under
18 the law of one or more foreign countries;

19 (B) provides for the book entry
20 settlement and custody of internationally traded
21 securities; and

22 (C) has been organized and in
23 operation for a period of not less than 15 consecutive
24 years.

25 Revisor's Note

26 Section 5(b), V.T.I.C. Article 21.39-B, refers to
27 a clearing corporation defined by "Section 8.102(c) of
28 the Business & Commerce Code." Section 5(b), V.T.I.C.
29 Article 21.39-B, was added by Chapter 267, Acts of the
30 68th Legislature, Regular Session, 1983. At that
31 time, Section 8.102(c), Business & Commerce Code,
32 defined "clearing corporation." Section 8.102,
33 Business & Commerce Code, was reorganized by Chapter
34 962, Acts of the 74th Legislature, Regular Session,
35 1995, and the definition of "clearing corporation" was
36 moved to Section 8.102(a). The revised law is drafted
37 accordingly.

38 Revised Law

39 Sec. 423.102. DEPOSIT AND HOLDING OF SECURITIES. (a) A
40 domestic insurer that has securities held in or purchased for the

1 insurer's general account or separate accounts may deposit the
2 securities or arrange through an agent, broker, or dealer for
3 deposit of the securities with a clearing corporation or in the
4 Federal Reserve book-entry system.

5 (b) If securities are deposited directly with a clearing
6 corporation or deposited indirectly through a participating
7 custodian bank, certificates representing securities of the same
8 class of the same issuer may be merged and held in bulk, in the name
9 of a nominee of the clearing corporation, with any other securities
10 deposited with the clearing corporation by any person, regardless
11 of the ownership of the securities.

12 (c) Certificates under Subsection (b) that represent
13 securities of small denominations may be merged into one or more
14 certificates of larger denominations.

15 (d) The records of an agent, broker, dealer, or member bank
16 through which an insurer holds securities in the Federal Reserve
17 book-entry system and the records of a custodian bank through which
18 an insurer holds securities with a clearing corporation must show
19 that the securities are held for the insurer and show the accounts
20 for which the securities are held.

21 (e) A bank must enter into a custodial agreement with an
22 insurer to be eligible to act as a participating custodian bank for
23 the insurer under this section. (V.T.I.C. Art. 21.39-B, Sec. 5(a)
24 (part).)

25 Source Law

26 Sec. 5. (a) [A domestic insurance company may
27 . . .] The insurance company may deposit or arrange
28 through its agents, brokers, or dealers for the
29 deposit of securities held in or purchased for its
30 general account or its separate accounts in either a
31 clearing corporation or the Federal Reserve Book Entry
32 System. When securities are deposited with a clearing
33 corporation directly or deposited indirectly through a
34 participating custodian bank, certificates
35 representing securities of the same class of the same
36 issuer may be merged and held in bulk in the name of
37 nominee of such clearing corporation with any other
38 securities deposited with such clearing corporation by
39 any person, regardless of the ownership of such
40 securities, and certificates representing securities
41 of small denominations may be merged into one or more
42 certificates of larger denominations. The records of

1 any agent, broker, dealer, or member banks through
2 which an insurance company holds securities in the
3 Federal Reserve Book Entry System and the record of any
4 custodian banks through which an insurance company
5 holds securities in a clearing corporation shall at
6 all times show that such securities are held for such
7 insurance company and for which accounts thereof. To
8 be eligible to act as a participating custodian bank
9 under this subsection, a bank must enter a custodial
10 agreement with the insurance company for which it is to
11 act as a participating custodian bank.

12 Revisor's Note

13 Section 5(a), V.T.I.C. Article 21.39-B, states
14 that certain records must "at all times" reflect that
15 certain securities are held for an insurer and reflect
16 the accounts for which the securities are held. The
17 revised law omits "at all times" as unnecessary
18 because, without an express limitation, a requirement
19 that the records reflect the specified information
20 includes the requirement that the records do so at all
21 times.

22 Revised Law

23 Sec. 423.103. SECURITIES HELD UNDER CUSTODIAL OR TRUST
24 AGREEMENT. A domestic insurer's securities that are held under a
25 custodial agreement or trust agreement with a bank, Federal Home
26 Loan Bank, or trust company may be issued in the name of a nominee of
27 the bank, Federal Home Loan Bank, or trust company only if the bank,
28 Federal Home Loan Bank, or trust company:

- 29 (1) has corporate trust powers;
- 30 (2) is authorized to act as a custodian or trustee;
- 31 (3) is organized under the laws of the United States or
32 any state of the United States; and
- 33 (4) meets one of the following requirements:
- 34 (A) is a member of the Federal Reserve System;
- 35 (B) is a member of or is eligible to receive
36 deposits that are insured by the Federal Deposit Insurance
37 Corporation;
- 38 (C) maintains an account with a Federal Reserve
39 Bank and is subject to supervision and examination by the Board of

1 Governors of the Federal Reserve System; or

2 (D) is subject to supervision and examination by
3 the Federal Housing Finance Board. (V.T.I.C. Art. 21.39-B, Sec. 1
4 (part).)

5 Source Law

6 Sec. 1. [Any director, member of a committee, or
7 officer, or any clerk of a domestic company . . . shall
8 not . . . invest such funds . . .] provided, however,
9 that securities kept under a custodial agreement or
10 trust agreement with a bank, federal home loan bank, or
11 trust company may be issued in the name of a nominee of
12 such bank, federal home loan bank, or trust company if
13 such bank, federal home loan bank, or trust company has
14 corporate trust powers and is duly authorized to act as
15 a custodian or trustee and is organized under the laws
16 of the United States of America or any state thereof
17 and either (i) is a member of the Federal Reserve
18 System, (ii) is a member of or is eligible to receive
19 deposits which are insured by the Federal Deposit
20 Insurance Corporation, (iii) maintains an account with
21 a Federal Reserve Bank and is subject to supervision
22 and examination by the Board of Governors of the
23 Federal Reserve System, or (iv) is subject to
24 supervision and examination by the Federal Housing
25 Finance Board;

26 Revisor's Note

27 Section 1, V.T.I.C. Article 21.39-B, requires
28 certain banks and trust companies to be "duly
29 authorized" to act as custodians or trustees of
30 securities. The revised law omits "duly" as
31 unnecessary because a bank or trust company is
32 authorized to act as a custodian only if the bank or
33 trust company is duly authorized.

34 Revised Law

35 Sec. 423.104. PROOF OF OWNERSHIP OF SECURITIES. (a) A
36 domestic insurer may demonstrate ownership of a security through a
37 definitive certificate or in accordance with rules adopted under
38 this section.

39 (b) The commissioner shall adopt rules under which a
40 domestic insurer may demonstrate ownership of an uncertificated
41 security, as defined by Section 8.102(a), Business & Commerce Code,
42 consistent with common practices of securities exchanges and
43 markets. The rules must establish:

1 (1) standards for the types of uncertificated
2 securities the insurer may hold;

3 (2) the manner in which the insurer may demonstrate
4 ownership of the security; and

5 (3) adequate financial safeguards relating to the
6 ownership of uncertificated securities. (V.T.I.C. Art. 21.39-B,
7 Secs. 5(a) (part), 6.)

8 Source Law

9 Sec. 5. (a) A domestic insurance company may
10 evidence its ownership of securities either through
11 definitive certificates or through uncertificated
12 securities as defined by the Business & Commerce Code
13 and as provided by Section 6 of this article. . . .

14 Sec. 6. The State Board of Insurance shall adopt
15 rules authorizing a domestic insurance company to
16 demonstrate ownership of an uncertificated security
17 consistent with common practices of securities
18 exchanges and markets. The rules shall establish:

19 (1) standards for the types of
20 uncertificated securities that may be held;

21 (2) the manner in which ownership of the
22 security may be demonstrated; and

23 (3) adequate financial safeguards
24 relating to the ownership of uncertificated
25 securities.

26 Revised Law

27 Sec. 423.105. MANDATORY DEPOSIT OF SECURITIES;
28 COMMISSIONER CONTROL. (a) An insurer that is required to deposit
29 securities as a condition of engaging in the business of insurance
30 in this state may deposit the securities with a clearing
31 corporation or in the Federal Reserve book-entry system.

32 (b) Securities under Subsection (a) are under the
33 commissioner's control and may not be withdrawn by the insurer
34 without the commissioner's approval. (V.T.I.C. Art. 21.39-B, Sec.
35 5(c) (part).)

36 Source Law

37 (c) Whenever an insurance company is required to
38 deposit securities as a condition of commencing or
39 continuing to do an insurance business in this state,
40 such deposit may be made through the use of a clearing
41 corporation or the Federal Reserve Book Entry System.
42 Securities deposited with a clearing corporation or
43 held in the Federal Reserve Book Entry System and used
44 to meet the deposit requirements under the insurance
45 laws of this state shall be under the control of the
46 commissioner and shall not be withdrawn by the

1 insurance company without the approval of the
2 commissioner. . . .

3 Revised Law

4 Sec. 423.106. REQUIRED EVIDENCE FOR SECURITIES. (a) An
5 insurer that deposits securities under Section 423.105 shall
6 provide evidence to the commissioner to establish that:

7 (1) the securities are recorded in an account in the
8 name of:

9 (A) the participating custodian bank or member
10 bank through which the insurer deposits the securities with a
11 clearing corporation or in the Federal Reserve book-entry system;
12 or

13 (B) the insurer, if the insurer makes the deposit
14 directly with the clearing corporation as a direct participant; and

15 (2) the records of the participating custodian bank,
16 direct participant, or member bank and of the clearing corporation
17 show that the securities are under the commissioner's control.

18 (b) Evidence under Subsection (a)(1) must be issued, as
19 applicable, by:

20 (1) the participating custodian bank;

21 (2) the member bank; or

22 (3) the insurer, when the insurer makes the deposit
23 directly with the clearing corporation as a direct participant.

24 (V.T.I.C. Art. 21.39-B, Sec. 5(c) (part).)

25 Source Law

26 (c) [Whenever an insurance company is required
27 to deposit securities as a condition of commencing or
28 continuing to do an insurance business in this state,
29 such deposit may be made through the use of a clearing
30 corporation or the Federal Reserve Book Entry System.
31 . . .] Any insurance company making a deposit in this
32 manner shall provide to the commissioner evidence
33 issued by its custodian or member bank through which
34 such insurance company has deposited securities with a
35 clearing corporation or in the Federal Reserve Book
36 Entry System or when making the deposit directly with
37 the clearing corporation as a participant,
38 respectively, in order to establish that the
39 securities are actually recorded in an account in the
40 name of the custodian or direct participant or member
41 bank, and shall also provide to the commissioner
42 evidence that the records of the custodian,
43 participant, or member bank and clearing corporation
44 reflect that such securities are held subject to the

1 order of the commissioner.

2 Revisor's Note

3 Section 5(c), V.T.I.C. Article 21.39-B, refers to
4 securities "held subject to the order of the
5 commissioner." The revised law substitutes "under the
6 commissioner's control" for "held subject to the order
7 of the commissioner" for consistency with other
8 terminology used in Section 5(c), revised in this
9 chapter as Section 423.105(b), to describe the
10 securities.

11 Revised Law

12 Sec. 423.107. ASSETS DEPOSITED WITH CLEARING CORPORATION.
13 A domestic insurer may deposit assets with a clearing corporation
14 only if:

15 (1) the insurer is a member of an insurance holding
16 company system that has assets of at least \$5 billion, as shown by
17 annual statements of member insurers for the preceding year;

18 (2) the insurer uses the clearing corporation only as
19 a depository for investments in internationally traded securities;

20 (3) the insurer's total investment in internationally
21 traded securities under Subdivision (2) does not exceed the
22 insurer's policyholders' surplus; and

23 (4) the insurer does not use securities deposited with
24 the clearing corporation as security for reinsurance. (V.T.I.C.
25 Art. 21.39-B, Sec. 5(e).)

26 Source Law

27 (e) A domestic insurance company may deposit
28 assets in a clearing corporation defined by Subsection
29 (b)(2) of this section only if the insurance company:

30 (1) is a member of an insurance company
31 holding company system with total assets of at least \$5
32 billion as reflected by annual statements of member
33 companies for the preceding year;

34 (2) uses that clearing corporation only as
35 a depository for investments in internationally traded
36 securities;

37 (3) has a total investment in those
38 internationally traded securities that does not exceed
39 the company's policyholders' surplus; and

40 (4) does not use those securities
41 deposited with that clearing corporation as security
42 for reinsurance.

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Revisor's Note

Section 5(e), V.T.I.C. Article 21.39-B, refers to an "insurance company holding company system." The revised law substitutes "insurance holding company system" for the quoted language for consistent use of terminology with Chapter 823 of this code, which regulates that type of system.

Revised Law

Sec. 423.108. LIMITATION ON ASSETS DEPOSITED WITH CLEARING CORPORATION. The commissioner by rule may adopt a reasonable limit on the percentage of a domestic insurer's assets that may be deposited with a clearing corporation. The limit may not exceed five percent of the insurer's total assets, as shown by the insurer's annual statement filed with the department for the year preceding the year for which the limit is adopted. (V.T.I.C. Art. 21.39-B, Sec. 5(d).)

Source Law

(d) The State Board of Insurance by rule may prescribe a reasonable maximum limit on the percentage of a domestic insurance company's assets that may be deposited in a clearing corporation as defined by Subsection (b)(2) of this section, but the maximum limit may not exceed five percent of a company's total assets as reflected by its annual statement filed with the State Board of Insurance for the year preceding the year for which the limit is prescribed.

CHAPTER 424. INVESTMENTS FOR CERTAIN INSURERS

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CHAPTER 424. INVESTMENTS FOR CERTAIN INSURERS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

10 Sec. 424.001. DEFINITIONS. In this chapter:

(1) "Insurer" means any insurer organized under the laws of this state other than an insurer writing life, health, and accident insurance.

14 (2) "Minimum capital and surplus" means the minimum
15 amount of capital stock and minimum amount of surplus required of an
16 insurer under Section 822.054 or 822.210.

17 (3) "Securities valuation office" means the
18 Securities Valuation Office of the National Association of
19 Insurance Commissioners. (V.T.I.C. Art. 2.10, Sec. (e) (part);
20 Art. 2.10-5, Sec. 1(10).)

Source Law

22 [Art. 2.10]

(e) No company except any writing life, health and accident insurance, organized under the laws of this state, [shall invest its funds over and above its minimum capital and its minimum surplus], as provided in Article 2.02, [except as otherwise provided in this Code, in any other manner than as follows:]

29

30 [Art. 2.10-5]

31 Sec. 1. In this article:

32 . . .

33 (10) "Securities valuation office" means
34 the Securities Valuation Office of the National
35 Association of Insurance Commissioners.

Revisor's Note

(1) The definition of "insurer" is derived from Section (e), V.T.I.C. Article 2.10, which was part of former V.T.I.C. Chapter 2, as are the other provisions revised in this chapter. It is clear from former

1 V.T.I.C. Article 2.01, revised in Chapter 822 of this
2 code, that former Chapter 2, including the provisions
3 revised in this chapter, applied to insurers organized
4 under the laws of this state, other than life, health,
5 and accident insurance companies. As a result, it is
6 appropriate to apply the definition of "insurer"
7 derived from Section (e), Article 2.10, throughout
8 this chapter. The revised law is drafted accordingly.

9 (2) Section (e), V.T.I.C. Article 2.10, refers
10 to "[an insurer's] minimum capital and its minimum
11 surplus, as provided in Article 2.02." The revised law
12 adds a definition of "minimum capital and surplus" for
13 drafting convenience and to eliminate frequent,
14 unnecessary repetition of the substance of the
15 definition. The revised law also substitutes a
16 reference to "Section 822.054 or 822.210" for the
17 reference to "Article 2.02" because the provisions of
18 that article governing minimum capital and surplus are
19 codified in those sections.

20 Revised Law

21 Sec. 424.002. INAPPLICABILITY OF CERTAIN LAW. The
22 definition of "state" assigned by Section 311.005, Government Code,
23 does not apply to this chapter. (New.)

24 Revisor's Note

25 Section 311.005(7), Government Code (Code
26 Construction Act), defines "state" to include a
27 district, commonwealth, territory, and insular
28 possession of the United States. That definition
29 generally applies to the revised law. However, it is
30 clear that in the provisions of V.T.I.C. Chapter 2,
31 revised in this chapter, the term "state" has a
32 narrower meaning. For example, Section (e), V.T.I.C.
33 Article 2.10, revised in this chapter as Section
34 424.068, permits an insurer to invest in

1 "commonwealths, territories or possessions of the
2 United States," but provides additional limitations on
3 those investments that are not provided for
4 investments in states of the United States. The
5 revised law provides that the Code Construction Act
6 definition does not apply in this chapter to ensure
7 that no substantive change is made by the revision of
8 the phrase "state of the United States" in the context
9 of this chapter.

10 [Sections 424.003-424.050 reserved for expansion]

11 SUBCHAPTER B. INVESTMENT OF FUNDS IN EXCESS
12 OF MINIMUM CAPITAL AND SURPLUS

13 Revised Law

14 Sec. 424.051. GENERAL INVESTMENT AUTHORITY SPECIFIED BY
15 LAW. An insurer may not invest the insurer's funds in excess of
16 minimum capital and surplus, except that an insurer may invest as
17 otherwise authorized by this code. (V.T.I.C. Art. 2.10, Sec. (e)
18 (part).)

19 Source Law

20 (e) No company . . . shall invest its funds
21 over and above its minimum capital and its minimum
22 surplus . . . except as otherwise provided in this
23 Code, in any other manner than as follows:
24

25 Revised Law

26 Sec. 424.052. ADDITIONAL GENERAL INVESTMENT AUTHORITY. An
27 insurer may make investments that are not otherwise authorized by
28 this chapter or otherwise authorized by this code for the insurer
29 if:

- 30 (1) the investment is not specifically prohibited by
31 law and does not exceed the limits prescribed by this code;
32 (2) the amount of a single investment under this
33 section does not exceed five percent of the insurer's capital and
34 surplus in excess of the insurer's minimum capital and surplus; and
35 (3) the aggregate amount of all investments made by
36 the insurer under this section does not exceed five percent of the

insurer's assets. (V.T.I.C. Art. 2.10-1, Sec. (2).)

Source Law

(2) Insurers may make additional investments which are not otherwise permitted by Article 2.08, Article 2.10, or Article 2.10-1 of this code, or which are not otherwise authorized by this code for such insurers, and which investments are not otherwise specifically prohibited by law, or which investments exceed the limits otherwise specified in this code, provided:

(a) The amount of any one such investment may not exceed five percent of the insurer's capital and surplus in excess of the insurer's statutory minimum capital and surplus; and

(b) The aggregate of the investments made under this Subsection (2) may not exceed five per cent of the insurer's assets.

Revisor's Note

(1) Section (2), V.T.I.C. Article 2.10-1, refers to certain investments authorized by "Article 2.08, Article 2.10, or Article 2.10-1 . . . , or . . . otherwise authorized by this code." The revised law substitutes a reference to an investment "otherwise authorized by this chapter or otherwise authorized by this code" and does not specifically reference investments authorized by V.T.I.C. Articles 2.10 and 2.10-1, which are revised in this chapter, or by V.T.I.C. Article 2.08, revised as Section 822.204 of this code, because those references are included within the substituted language. In addition, the provisions revised in this chapter that are not specifically referenced in Section (2) are included in the reference in Section (2) to investments "otherwise authorized by this code."

(2) Section (2)(a), V.T.I.C. Article 2.10-1, refers to an insurer's "statutory minimum capital and surplus." The revised law omits the reference to "statutory" as unnecessary because "minimum capital and surplus" is defined in Section 424.001, for the purposes of this chapter, as the minimum amount of capital stock and minimum amount of surplus required

1 of an insurer under the relevant statutes.

2 Revised Law

3 Sec. 424.053. LIMITATION AS TO SINGLE ISSUER OR BORROWER.

4 (a) Notwithstanding Sections 424.051, 424.056-424.071, and
5 424.074, the aggregate amount of an insurer's investments in all or
6 any type of securities, loans, obligations, or evidences of
7 indebtedness of a single issuer or borrower, other than investments
8 described by Subsection (c), may not exceed five percent of the
9 insurer's total assets.

10 (b) For purposes of this section, a single issuer or
11 borrower includes:

12 (1) the issuer's or borrower's majority-owned
13 subsidiaries;

14 (2) the issuer's or borrower's parent; or

15 (3) the majority-owned subsidiaries of the issuer's or
16 borrower's parent.

17 (c) This section does not apply to:

18 (1) an authorized investment that:

19 (A) is a direct obligation of or guaranteed by
20 the full faith and credit of the United States, this state, or a
21 political subdivision of this state; or

22 (B) is insured by an agency of the United States
23 or this state; or

24 (2) an investment described by Section 424.061 or
25 424.063. (V.T.I.C. Art. 2.10, Sec. (g) (part).)

26 Source Law

27 (g) Notwithstanding Subsections (a)-(e) of this
28 article:

29 (1) investment in all or any types of
30 securities, loans, obligations, or evidences of
31 indebtedness of a single issuer or borrower, including
32 the issuer's or borrower's majority-owned subsidiaries
33 or parent or the majority-owned subsidiaries of that
34 parent, other than those authorized investments that
35 either are direct obligations of or are guaranteed by
36 the full faith and credit of the United States of
37 America, this state, or a political subdivision of
38 this state, or are insured by any agency of the United
39 States of America or this state, may not in the
40 aggregate exceed five percent of the insurer's total
41 assets, other than investments described by Subsection

(e)(5) or (e)(7) of this article; and
. . . .

Revisor's Note

Section (g), V.T.I.C. Article 2.10, refers to Section (e), Article 2.10. Section (e) is revised as various sections in this chapter, including as Sections 424.001(1) and (2). Throughout this subchapter, however, the revised law does not include in the revision of references to Section (e) or to Article 2.10 a reference to Sections 424.001(1) and (2) because those sections are definitional provisions that apply by their own terms throughout this chapter, and a reference to those sections is therefore unnecessary.

Revised Law

Sec. 424.054. APPLICABILITY OF PERCENTAGE AUTHORIZATIONS AND LIMITATIONS. (a) The percentage authorizations and limitations established by Sections 424.051, 424.053-424.071, and 424.074 apply only at the time an investment is originally acquired or a transaction is entered into and do not apply to the insurer or the investment or transaction after that time.

(b) An investment, once qualified under a law described by Subsection (a), remains qualified notwithstanding any refinancing, restructuring, or modification of the investment, except that an insurer may not refinance, restructure, or modify an investment solely to circumvent the requirements or limitations of a law described by Subsection (a). (V.T.I.C. Art. 2.10, Sec. (f).)

Source Law

(f) The percentage authorizations and limitations set forth in this article apply only at the time of the original acquisition of an investment or at the time a transaction is entered into and do not thereafter apply to the insurer or the investment or transaction except as provided by this subsection. An investment, once qualified under this article, remains qualified notwithstanding any refinancing, restructuring, or modification of the investment; however, the insurer may not engage in that refinancing, restructuring, or modification solely to circumvent the requirements or limitations of this article.

1 (C) quality;
2 (D) maturity;
3 (E) type of industry; and
4 (F) geographical areas, as to both domestic and
5 foreign investments;

6 (2) balance safety of principal with yield and growth;

7 (3) seek a reasonable relationship of assets and
8 liabilities as to term and nature; and

9 (4) be appropriate considering the capital and surplus
10 and the business conducted by the insurer.

11 (c) At least annually, the board of directors or
12 corresponding authority shall review the adequacy of the investment
13 plan and the implementation of the plan.

14 (d) An insurer shall maintain the insurer's investment plan
15 in the insurer's principal office and provide the plan to the
16 commissioner or the commissioner's designee on request. The
17 commissioner or the commissioner's designee shall maintain the plan
18 as a privileged and confidential document. The plan is not subject
19 to public disclosure. (V.T.I.C. Art. 2.10, Secs. (a), (b), (c).)

20 Source Law

21 Art. 2.10. (a) The board of directors of each
22 insurer, or the corresponding authority designated by
23 the charter, bylaws, or plan of operations of an
24 insurer that does not have a board of directors, shall
25 adopt a written investment plan consistent with the
26 requirements of this article and Articles 2.08, 2.09,
27 2.10-1, 2.10-2, 2.10-3, 2.10-4, 2.10-5, 6.08, 8.18,
28 and 8.19 of this code and the other applicable statutes
29 governing investments by the insurer. The investment
30 plan must:

31 (1) specify the diversification of the
32 insurer's investments designed to reduce the risk of
33 large losses, by:

34 (A) broad categories of investments,
35 such as bonds and real estate loans;

36 (B) kinds of investments, such as:
37 (i) obligations of governments
38 or business entities;

39 (ii) mortgage-backed
40 securities; and

41 (iii) real estate loans on
42 office, retail, industrial, or residential
43 properties;

44 (C) quality;

45 (D) maturity;

46 (E) type of industry; and

47 (F) geographical areas, as to both

1 domestic and foreign investments;
2 (2) balance the safety of principal with
3 yield and growth;
4 (3) seek a reasonable relationship of
5 assets and liabilities as to term and nature; and
6 (4) be appropriate considering the capital
7 and surplus and the business conducted by the insurer.
8 (b) At least annually, the board of directors or
9 other authority shall review the adequacy of the
10 investment plan and the implementation of the plan.
11 (c) The insurer shall maintain the investment
12 plan in its principal office and shall provide the plan
13 to the commissioner or the commissioner's designee on
14 request. The commissioner or the commissioner's
15 designee shall maintain the investment plan as a
16 privileged and confidential document, and the plan is
17 not subject to public disclosure.

18 Revisor's Note

19 Section (a), V.T.I.C. Article 2.10, refers to the
20 requirements of "this article and Articles 2.08, 2.09,
21 2.10-1, 2.10-2, 2.10-3, 2.10-4, 2.10-5, 6.08, 8.18,
22 and 8.19 of this code and the other applicable statutes
23 governing investments by the insurer." The revised
24 law substitutes a reference to "this chapter" for the
25 references to Articles 2.10-1, 2.10-2, 2.10-4, and
26 2.10-5, which are revised in this chapter. Although
27 V.T.I.C. Article 2.10-3A, which is also revised in
28 this chapter, is not referenced in the quoted
29 language, it was enacted by Chapter 1040, Acts of the
30 76th Legislature, Regular Session, 1999, to regulate
31 transactions previously regulated under Article
32 2.10-3, which was repealed by that act. Furthermore,
33 Article 2.10-3A is included within the meaning of the
34 reference to "other . . . statutes governing
35 investments by the insurer," and it is therefore
36 appropriate to include a reference to the revision of
37 that article. In addition, the revised law omits the
38 reference to "applicable" with respect to other
39 statutes governing investments by the insurer because
40 a statute governs an investment only if the statute is
41 applicable.

Revised Law

Sec. 424.057. INVESTMENT RECORDS. An insurer shall maintain investment records covering each transaction. The insurer must be able to demonstrate at all times to the department that the insurer's investments are within the limitations imposed by the statutes listed in Section 424.056(a). (V.T.I.C. Art. 2.10, Sec. (d).)

Source Law

(d) The insurer shall maintain investment records covering each transaction. At all times, the insurer must be able to demonstrate to the department that its investments are within the limitations prescribed by the statutes described by Subsection (a) of this article.

Revised Law

Sec. 424.058. AUTHORIZED INVESTMENTS: FORM OF MINIMUM CAPITAL AND SURPLUS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in any manner authorized by Section 822.204 for investment of the insurer's minimum capital and surplus. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

Source Law

(e) No company . . . shall invest its funds over and above its minimum capital and its minimum surplus . . . in any other manner than as follows:

(1) as provided for the investment of its minimum capital and its minimum surplus in Article 2.08;

• • • •

Revised Law

Sec. 424.059. AUTHORIZED INVESTMENTS: GOVERNMENT OBLIGATIONS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in a bond or other evidence of indebtedness of any state or of Canada or a province of Canada that:

(1) is issued by the authority of law; and

(2) at the time of purchase:

(A) bears interest; and

(B) is not in default as to principal or interest. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

Source Law

(e) No company . . . shall invest its funds over and above its minimum capital and its minimum surplus . . . in any other manner than as follows:

(2) in bonds or other evidences of debt which at the time of purchase are interest-bearing and are issued by authority of law and are not in default as to principal or interest, of any state, Canada, or province of Canada,

Revised Law

Sec. 424.060. AUTHORIZED INVESTMENTS: STOCK OF NATIONAL OR STATE BANK. (a) An insurer may invest the insurer's funds in excess of minimum capital and surplus in the stock of:

(1) a national bank; or

(2) a state bank of this state whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) Notwithstanding Subsection (a)(2):

(1) not more than 35 percent of the total outstanding stock of a single state bank may be purchased by a single insurer; and

(2) if an insurer has invested the insurer's funds in 35 percent of a state bank's stock under this section, no other insurer may invest funds in the bank's remaining stock. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

Source Law

(e) No company . . . shall invest its funds over and above its minimum capital and its minimum surplus . . . in any other manner than as follows:

(2) . . . or in the stock of any National Bank, in stock of any State Bank of Texas whose deposits are insured by the Federal Deposit Insurance Corporation; provided, however, that if said funds are invested in the stock of a State Bank of Texas that not more than thirty-five per cent (35%) of the total outstanding stock of any one (1) State Bank of Texas may be so purchased by any one (1) insurance company; and provided further, that neither the insurance company whose funds are invested in said bank stock nor any other insurance company may invest its funds in the remaining stock of any such State Bank;

Revised Law

Sec. 424.061. AUTHORIZED INVESTMENTS: DEPOSITS IN CERTAIN FINANCIAL INSTITUTIONS. (a) Subject to this section, an insurer

1 may invest in any type of savings deposit, time deposit,
2 certificate of deposit, NOW account, or money market account in a
3 solvent bank, savings and loan association, or credit union that is
4 organized under the laws of the United States or a state, or in a
5 branch of one of those financial institutions.

6 (b) An investment under this section must be made in
7 accordance with the laws or regulations applicable to the bank,
8 savings and loan association, or credit union.

9 (c) The amount of an insurer's deposits in a single bank,
10 savings and loan association, or credit union may not exceed the
11 greater of:

12 (1) 20 percent of the insurer's capital and surplus;

13 (2) the amount of federal or state deposit insurance
14 coverage that applies to the deposits; or

15 (3) 10 percent of the amount of capital, surplus, and
16 undivided profits of the financial institution receiving the
17 deposits. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

18 Source Law

19 (e) No company . . . shall invest its funds over
20 and above its minimum capital and its minimum surplus
21 . . . in any other manner than as follows:

22 . . .
23 (5) in any type or form of savings
24 deposits, time deposits, certificates of deposit, NOW
25 accounts, and money market accounts in solvent banks,
26 savings and loan associations, credit unions, and
27 branches of those financial institutions, organized
28 under the laws of the United States or of a state, if
29 made in accordance with the laws or regulations
30 applicable to those entities, provided that the amount
31 of the deposits in any one bank, savings and loan
32 association, or credit union may not exceed the
33 greater of:

34 (A) 20 percent of the insurer's
35 capital and surplus;

36 (B) the amount of federal or state
37 deposit insurance coverage relating to that deposit;
38 or

39 (C) 10 percent of the amount of
40 capital, surplus, and undivided profits of the entity
41 receiving the deposits;

42

43 Revisor's Note

44 Section (e)(5), V.T.I.C. Article 2.10, refers to
45 any "type or form" of deposit in a financial

1 institution. The revised law omits the reference to
2 "form" because, in this context, the term is included
3 in the meaning of "type."

4 Revised Law

5 Sec. 424.062. AUTHORIZED INVESTMENTS: CERTAIN OBLIGATIONS
6 OF PARTNERSHIP OR CORPORATION. (a) Except as provided by this
7 section, an insurer may invest the insurer's funds in excess of
8 minimum capital and surplus in a stock, bond, debenture, bill of
9 exchange, evidence of indebtedness, other commercial note or bill,
10 or security of any partnership or dividend-paying corporation that:

11 (1) is incorporated under the laws of the United
12 States, this state, another state, Canada, or a province of Canada;

13 (2) is solvent at the time of the investment; and

14 (3) has not defaulted in the payment of any of the
15 partnership's or corporation's obligations during the five years
16 preceding the date of the investment.

17 (b) Except as provided by Subsection (d), an insurer may
18 invest the insurer's funds in excess of minimum capital and
19 surplus, and all reserves required by law, in a stock, bond, or
20 debenture of any solvent corporation that is incorporated under the
21 laws of the United States, this state, another state, Canada, or a
22 province of Canada.

23 (c) Funds invested under Subsection (a) may not be invested
24 in the stock of an oil, manufacturing, or mercantile corporation
25 unless the corporation has, at the time of the investment:

26 (1) a net worth of at least \$250,000, if the
27 corporation is organized under the laws of this state; or

28 (2) a combined capital, surplus, and undivided profits
29 of at least \$2.5 million, if the corporation is not organized under
30 the laws of this state.

31 (d) An insurer may not invest the insurer's funds in:

32 (1) the insurer's own stock or in any stock on account
33 of which the holders or owners of the stock may be liable for an
34 assessment other than taxes; or

1 (2) any stock, bond, or other security issued by a
2 corporation with respect to which a majority of the stock having
3 voting powers is directly or indirectly owned by or for the benefit
4 of an officer or director of the insurer, unless the insurer has
5 been in continuous operation for at least five years. (V.T.I.C.
6 Art. 2.10, Sec. (e) (part).)

7 Source Law

8 (e) No company . . . shall invest its funds over
9 and above its minimum capital and its minimum surplus
10 . . . in any other manner than as follows:

11 (6) in the stocks, bonds, debentures,
12 bills of exchange, evidence of indebtedness, or other
13 commercial notes or bills and securities of any
14 solvent partnership or solvent dividend paying
15 corporation at time of purchase, incorporated under
16 the laws of this state, any other state, the United
17 States, Canada, or any province of Canada, which has
18 not defaulted in the payment of any of its obligations
19 for a period of five (5) years, immediately preceding
20 the date of the investment; provided that:

21 (A) such funds may not be invested in
22 the stock of any oil, manufacturing or mercantile
23 corporation organized under the laws of this state,
24 unless such corporation has at the time of investment a
25 net worth of not less than \$250,000.00 nor in the stock
26 of any oil, manufacturing or mercantile corporation
27 not organized under the laws of this state, unless such
28 corporation has a combined capital, surplus and
29 undivided profits of not less than \$2,500,000.00;

30 (B) any such insurance company may
31 invest its funds over and above its minimum capital
32 stock, its minimum surplus, and all reserves required
33 by law, in the stocks, bonds or debentures of any
34 solvent corporation organized under the laws of this
35 state, any other state, the United States, Canada, or
36 any province of Canada;

37 (C) no such insurance company shall
38 invest any of its funds in its own stock or in any stock
39 on account of which the holders or owners thereof may,
40 in any event, be or become liable to any assessment,
41 except for taxes; and

42 (D) no such insurance company shall
43 invest any of its funds in stocks, bonds or other
44 securities issued by a corporation if a majority of the
45 stock having voting powers of such issuing corporation
46 is owned, directly or indirectly, by or for the benefit
47 of one or more officers or directors of such insurance
48 company; provided, however, that this paragraph shall
49 not apply to any insurance company which has been in
50 continuous operation for five (5) years;

51

52 Revisor's Note

53 (1) Section (e)(6), V.T.I.C. Article 2.10,
54 authorizes an insurer to invest in certain
55 partnerships or corporations that have not defaulted
56

1 in the payment of any obligation during the five years
2 "immediately preceding" the date of the investment.
3 The revised law omits the term "immediately" before
4 "preceding" as unnecessary because in this context,
5 "preceding" means "immediately preceding."

6 (2) Section (e)(6)(C), V.T.I.C. Article 2.10,
7 refers to investment in stock on account of which the
8 holders or owners of the stock "may, in any event, be
9 or become liable" for any assessment. The revised law
10 substitutes "may be liable" for the quoted language
11 because the meaning of the quoted language is included
12 within the meaning of "may be liable."

13 Revised Law

14 Sec. 424.063. AUTHORIZED INVESTMENTS: MUTUAL FUNDS. An
15 insurer may invest the insurer's funds in excess of minimum capital
16 and surplus in shares of a mutual fund engaged in business under the
17 Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as
18 amended, if:

19 (1) the mutual fund is solvent and has at least \$1
20 million of net assets as of the date of the mutual fund's latest
21 annual or more recent certified audited financial statement; and

22 (2) the amount of the insurer's investment in a single
23 mutual fund does not exceed 15 percent of the insurer's capital and
24 surplus. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

25 Source Law

26 (e) No company . . . shall invest its funds over
27 and above its minimum capital and its minimum surplus
28 . . . in any other manner than as follows:

29 . . .
30 (7) in shares of mutual funds doing
31 business under the Investment Company Act of 1940 (15
32 U.S.C. Section 80a-1 et seq.), as amended, provided
33 that:

34 (A) mutual funds must be solvent with
35 at least \$1,000,000 of net assets as of the date of its
36 latest annual or more recent certified audited
37 financial statement; and

38 (B) investment in any one mutual fund
39 may not exceed 15 percent of the insurer's capital and
40 surplus;

41

1 that section.

2 (f) An insurer's admitted assets are determined from the
3 insurer's annual statements that are made as of the December 31 that
4 precedes the date of the determination and are filed with the
5 department as required by law. The value of any investment made
6 under this section is subject to the appraisal requirement of
7 Section 862.002. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

8 Source Law

9 (e) No company . . . shall invest its funds over
10 and above its minimum capital and its minimum surplus
11 . . . in any other manner than as follows:

12 . . .
13 (11) in real estate to the extent as
14 elsewhere authorized by this Code; provided that:

15 (A) any such company with admitted
16 assets in excess of \$500,000,000.00 may own other
17 investment real property or participations therein,
18 which must be materially enhanced in value by the
19 construction of durable, permanent type buildings and
20 other improvements costing an amount at least equal to
21 the cost of such real property, exclusive of buildings
22 and improvements at the time of acquisition, or by the
23 construction of such buildings and improvements which
24 must be commenced within two years of the date of
25 acquisition of such real property; however, nothing
26 in this Article shall allow ownership of, development
27 of, or equity interest in any residential property or
28 subdivision, single or multiunit family dwelling
29 property, or undeveloped real estate for the purpose
30 of subdivision for or development of residential,
31 single or multiunit family dwellings, except those
32 properties acquired as provided in Article 6.08 of
33 this Code, and such ownership, development, or equity
34 interests shall be specifically prohibited;

35 (B) the total amount invested by any
36 such company in all such investment real property and
37 improvements thereof shall not exceed fifteen per cent
38 (15%) of its admitted assets which are in excess of
39 \$500,000,000.00; however, the amount invested in any
40 one such property and its improvements or interest
41 therein shall not exceed five per cent (5%) of its
42 admitted assets which are in excess of
43 \$500,000,000.00. The admitted assets of the company
44 at any time shall be determined from its annual
45 statements made as of the last preceding December 31
46 and filed with the department as required by law. The
47 value of any investment made under this Article shall
48 be subject to the appraisal provision set forth in
49 Article 6.08 of this Code;

50 (C) the investment authority granted
51 by Paragraphs (A) and (B) of this subdivision is in
52 addition to and separate and apart from that granted by
53 Article 6.08 of this Code; however, no such company
54 shall make any investment in such real estate which,
55 when added to those properties described in Article
56 6.08 of this Code, would be in excess of the
57 limitations provided by Article 6.08 of this Code; and
58

1 Sec. (e) (part).)

2 Source Law

3 (e)

4 (11)

5 (D) the insurance companies defined
6 in Article 2.01 of this Code and other insurers
7 specifically made subject to the provisions of this
8 Article shall not engage in the business of a real
9 estate broker or a real estate salesperson as defined
10 by The Real Estate License Act (Article 6573a, Vernon's
11 Texas Civil Statutes), except that such insurers may
12 hold, improve, maintain, manage, rent, lease, sell,
13 exchange, or convey any of the real property interests
14 legally owned as investments under this Code;

15

16 Revisor's Note

17 Section (e)(11)(D), V.T.I.C. Article 2.10,
18 refers to "a real estate broker or a real estate
19 salesperson as defined by The Real Estate License Act
20 (Article 6573a, Vernon's Texas Civil Statutes)." That
21 statute was codified in 2001 as Chapter 1101,
22 Occupations Code. Section 1101.002, Occupations Code,
23 defines the terms "broker" and "salesperson" rather
24 than "real estate broker" and "real estate
25 salesperson." The revised law is drafted accordingly.

26 Revised Law

27 Sec. 424.066. AUTHORIZED INVESTMENTS: OBLIGATIONS SECURED
28 BY REAL PROPERTY LOANS. (a) Subject to this section, an insurer
29 may invest the insurer's funds in excess of minimum capital and
30 surplus in a bond, note, or evidence of indebtedness, or a
31 participation in a bond, note, or evidence of indebtedness, that is
32 secured by a valid first lien on real property or a leasehold estate
33 in real property located in the United States or in any state,
34 commonwealth, territory, or possession of the United States.

35 (b) The amount of an obligation secured by a first lien on
36 real property or a leasehold estate in real property may exceed 90
37 percent of the value of the real property or leasehold estate only
38 if:

39 (1) the amount does not exceed 100 percent of the value
40 of the real property or leasehold estate and the insurer or one or

1 more wholly owned subsidiaries of the insurer owns, in the
2 aggregate, a 10 percent or greater equity interest in the real
3 property or leasehold estate;

4 (2) the amount does not exceed 95 percent of the value
5 of the real property and:

6 (A) the property contains only a dwelling
7 designed exclusively for occupancy by not more than four families
8 for residential purposes; and

9 (B) the portion of the unpaid balance of the
10 obligation that exceeds 90 percent of the value of the real property
11 is guaranteed or insured by a mortgage guaranty insurer authorized
12 to engage in business in this state; or

13 (3) the amount exceeds 90 percent of the value of the
14 real property only to the extent the obligation is insured or
15 guaranteed by:

16 (A) this state;

17 (B) the United States;

18 (C) the Federal Housing Administration under the
19 National Housing Act (12 U.S.C. Section 1701 et seq.), as amended;
20 or

21 (D) any other agency or instrumentality of the
22 United States.

23 (c) The term of an obligation secured by a first lien on a
24 leasehold estate in real property and improvements located on the
25 property may not exceed a period equal to four-fifths of the
26 unexpired term of the leasehold estate, and the obligation must
27 fully amortize during that period. The term of the leasehold estate
28 may not expire sooner than the 10th anniversary of the expiration
29 date of the term of the obligation.

30 (d) An obligation secured by a first lien on a leasehold
31 estate in real property and improvements located on the property
32 must be payable in equal monthly, quarterly, semiannual, or annual
33 payments of principal plus accrued interest to the date of the
34 principal payment.

1 (e) An insurer's investment in a single obligation under
2 this section may not exceed 10 percent of the insurer's capital and
3 surplus. An insurer's aggregate investments under this section may
4 not exceed 30 percent of the insurer's assets. (V.T.I.C. Art. 2.10,
5 Sec. (e) (part).)

6 Source Law

7 (e) No company . . . shall invest its funds over
8 and above its minimum capital and its minimum surplus
9 . . . in any other manner than as follows:

10 (3) in bonds, notes, evidences of
11 indebtedness or participations therein secured by a
12 valid first lien upon real property or leasehold
13 estate therein located in the United States of
14 America, its states, commonwealths, territories, or
15 possessions, provided that:

16 (A) the amount of any such obligation
17 secured by a first lien upon real property or leasehold
18 estate therein shall not exceed ninety per cent (90%)
19 of the value of such real property or leasehold estate
20 therein, but the amount of such obligation may:

21 (i) exceed ninety per cent
22 (90%) but shall not exceed one hundred per cent (100%)
23 of the value of such real property or leasehold estate
24 therein if the insurer or one or more wholly owned
25 subsidiaries of the insurer own in the aggregate a ten
26 per cent (10%) or greater equity interest in such real
27 property or leasehold estate therein;

28 (ii) be ninety-five per cent
29 (95%) of the value of such real property if it contains
30 only a dwelling designed exclusively for occupancy by
31 not more than four families for residential purposes,
32 and the portion of the unpaid balance of such
33 obligation which is in excess of an amount equal to
34 ninety per cent (90%) of such value is guaranteed or
35 insured by a mortgage insurance company licensed to do
36 business in the State of Texas; or

37 (iii) be greater than ninety
38 per cent (90%) of the value of such real property to
39 the extent the obligation is insured or guaranteed by
40 the United States of America, or an agency or
41 instrumentality thereof, the Federal Housing
42 Administration pursuant to the National Housing Act of
43 1934, as amended (12 U.S.C. Sec. 1701 et seq.), or the
44 State of Texas; and

45 (B) the term of an obligation secured
46 by a first lien upon a leasehold estate in real
47 property and improvements situated thereon shall not
48 exceed a period equal to four-fifths (4/5) of the then
49 unexpired term of such leasehold estate, provided
50 that:

51 (i) the unexpired term of the
52 leasehold estate must extend at least ten (10) years
53 beyond the term of the obligation; and

54 (ii) each obligation shall be
55 payable in equal monthly, quarterly, semi-annual, or
56 annual payments of principal plus accrued interest to
57 the date of such principal payment, so that under
58 either method of repayment such obligation will fully
59 amortize during a period of time not to exceed
60 four-fifths (4/5) of the then unexpired term of the
61

1 security leasehold estate;
2 (C) the amount of any one such
3 obligation may not exceed ten per cent (10%) of the
4 insurer's capital and surplus; and
5 (D) the aggregate of investments made
6 under this Subdivision (3) may not exceed thirty per
7 cent (30%) of the insurer's assets;
8

9 Revisor's Note

10 Section (e)(3)(A)(ii), V.T.I.C. Article 2.10,
11 refers to a "mortgage insurance company" that is
12 "licensed" to engage in business in this state. The
13 revised law substitutes "mortgage guaranty insurer"
14 for "mortgage insurance company" for consistency with
15 V.T.I.C. Article 21.50, revised as Chapter 3502, which
16 regulates mortgage guaranty insurance. The revised
17 law also substitutes "authorized" for "licensed"
18 because "certificate of authority" is the term used
19 throughout this code in relation to an entity's
20 authority to engage in business.

21 Revised Law

22 Sec. 424.067. AUTHORIZED INVESTMENTS: TRANSPORTATION
23 EQUIPMENT. An insurer may invest the insurer's funds in excess of
24 minimum capital and surplus in:

- 25 (1) an adequately secured equipment trust obligation,
26 certificate, or other instrument evidencing an interest in
27 transportation equipment wholly or partly located in the United
28 States; and
29 (2) a right to receive determined portions of rental,
30 purchase, or other fixed obligatory payments for the use or
31 purchase of the equipment. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

32 Source Law

33 (e) No company . . . shall invest its funds
34 over and above its minimum capital and its minimum
35 surplus . . . in any other manner than as follows:
36 . . .
37 (12) in equipment trust obligations or
38 certificates that are adequately secured or in other
39 adequately secured instruments evidencing an interest
40 in transportation equipment in whole or in part within
41 the United States and a right to receive determined
42 portions of rental, purchase, or other fixed
43 obligatory payments for the use or purchase of the

transportation equipment; and

• • • •

Revised Law

Sec. 424.068. AUTHORIZED INVESTMENTS: INVESTMENT IN FOREIGN JURISDICTION. (a) In addition to the investments in Canada authorized by Sections 424.051, 424.058-424.071, and 424.074 and subject to this section, an insurer may invest the insurer's funds in excess of minimum capital and surplus in an investment in a foreign commonwealth, territory, or possession of the United States, a foreign country other than Canada, or a foreign security originating in one of those commonwealths, territories, possessions, or countries, if:

(1) the investment is similar to investments the insurer is authorized by Sections 424.051, 424.058-424.071, and 424.074 to make within the United States or Canada; and

(2) if a debt obligation, the investment is rated one or two by the securities valuation office.

(b) The aggregate amount of an insurer's investments under Sections 424.051, 424.058-424.071, and 424.074 in a single foreign jurisdiction may not exceed:

(1) as to a foreign jurisdiction that is given a sovereign debt rating of one by the securities valuation office, 10 percent of the insurer's admitted assets; or

(2) as to any other foreign jurisdiction, five percent of the insurer's admitted assets.

(c) The amount of investments made under this section may not exceed the sum of:

(1) the amounts authorized by Section 424.073; and

(2) 20 percent of the insurer's assets.

(d) The combined total of the amount of investments made under this section, the amount of similar investments made within the United States and Canada, and any amounts of investments authorized by Section 424.073 may not exceed any limitation prescribed by Sections 424.051, 424.058-424.071, and 424.074. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

Source Law

(e) No company . . . shall invest its funds over and above its minimum capital and its minimum surplus . . . in any other manner than as follows:

(8) in addition to the investments in Canada authorized in other subdivisions of this subsection, investments in other foreign countries, commonwealths, territories or possessions of the United States, or foreign securities originating in such foreign countries, commonwealths, territories or possessions of the United States, provided that:

(A) such investments are similar to those authorized for investment within the United States or Canada by other provisions of this subsection and, if debt obligations, are rated one or two by the Securities Valuation Office of the National Association of Insurance Commissioners;

(B) the aggregate amount of foreign investments held by the insurer under this subsection in a single foreign jurisdiction does not exceed either 10 percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of Securities Valuation Office 1 by the Securities Valuation Office of the National Association of Insurance Commissioners or five percent of its admitted assets as to any other foreign jurisdiction;

(C) such investments when added to the amount of similar investments made within the United States and Canada and any amounts authorized by Article 2.10-2 of this Code do not result in the combined total of such investments exceeding the limitations specified elsewhere in this subsection; and

(D) such investments may not exceed the sum of:

(i) the amounts authorized by Article 2.10-2 of this Code; and

(ii) 20 percent of the insurer's assets;

• • • •

Revised Law

Sec. 424.069. AUTHORIZED INVESTMENTS: CERTAIN LOANS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in a loan on the pledge of any mortgage, stock, bond, or other evidence of indebtedness acceptable as an investment under Sections 424.051, 424.053-424.071, and 424.074, if the current value of the mortgage, stock, bond, or other evidence of indebtedness is at least 25 percent more than the amount of the loan. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

Source Law

(e) No company . . . shall invest its funds over and above its minimum capital and its minimum surplus . . . in any other manner than as follows:

• • •

1 (9) in loans upon the pledge of any
2 mortgage, stock, bonds or other evidence of
3 indebtedness acceptable as investments under the terms
4 of this Article, if the current value of such mortgage,
5 stock, bonds or other evidence of indebtedness is at
6 least twenty-five per cent (25%) more than the amount
7 loaned thereon;

8

9 Revised Law

10 Sec. 424.070. AUTHORIZED INVESTMENTS: OBLIGATIONS OF LOCAL
11 GOVERNMENTAL ENTITIES. (a) Subject to this section, an insurer may
12 invest the insurer's funds in excess of minimum capital and surplus
13 in a bond or other interest-bearing evidence of indebtedness of a:

14 (1) county or subdivision of a county;

15 (2) municipality;

16 (3) road district;

17 (4) turnpike district or authority;

18 (5) water district;

19 (6) school district;

20 (7) sanitary or navigation district; or

21 (8) municipally owned revenue water system, sewer
22 system, or electric utility company with respect to which the
23 municipality has appropriated, pledged, or otherwise provided for
24 special revenues to meet the principal and interest payments of the
25 bond or other evidence of indebtedness.

26 (b) A bond or other evidence of indebtedness of a navigation
27 district is an authorized investment under this section only if:

28 (1) the navigation district is located wholly or
29 partly in a county that has a population of at least 100,000; and

30 (2) the interest due on the bond or other evidence of
31 indebtedness has never been in default. (V.T.I.C. Art. 2.10, Sec.

32 (e) (part).)

33 Source Law

34 (e) No company . . . shall invest its funds over
35 and above its minimum capital and its minimum surplus
36 . . . in any other manner than as follows:

37

38 (4) in bonds or other interest-bearing
39 evidences of debt of any county, municipality, road
40 district, turnpike district or authority, water
41 district, any subdivision of a county, incorporated
42 city, town, school district, sanitary or navigation

1 district, any municipally owned revenue water system,
2 sewer system or electric utility company where special
3 revenues to meet the principal and interest payments
4 of such municipally owned revenue water system, sewer
5 system or electric utility company bonds or other
6 evidences of debt shall have been appropriated,
7 pledged or otherwise provided for by such
8 municipality, provided that:

9 (A) before bonds or other evidences
10 of debt of navigation districts shall be eligible
11 investments such navigation district shall be located
12 in whole or in part in a county containing a population
13 of not less than 100,000 according to the last
14 preceding Federal Census; and

15 (B) the interest due on such
16 navigation bonds or other evidences of debt of
17 navigation districts must never have been defaulted;
18

19 Revisor's Note

20 (1) Section (e)(4), V.T.I.C. Article 2.10,
21 lists certain entities, including a "municipality,
22 . . . incorporated city, [or] town." The revised law
23 omits the references to "incorporated city" and "town"
24 as included within the meaning of "municipality."

25 (2) Section (e)(4), V.T.I.C. Article 2.10,
26 describes a population number that is to be determined
27 according to the most recent federal census. The
28 revised law omits the reference to the federal census
29 as unnecessary because Section 311.005(3), Government
30 Code (Code Construction Act), applicable to the
31 revised law, and Section 312.011(20), Government Code,
32 define "population" as population according to the
33 most recent federal decennial census.

34 Revised Law

35 Sec. 424.071. AUTHORIZED INVESTMENTS: THE UNIVERSITY OF
36 TEXAS. An insurer may invest the insurer's funds in excess of
37 minimum capital and surplus in an interest-bearing note or bond of
38 The University of Texas issued under the laws of this state.
39 (V.T.I.C. Art. 2.10, Sec. (e) (part).)

40 Source Law

41 (e) No company . . . shall invest its funds over
42 and above its minimum capital and its minimum surplus
43 . . . in any other manner than as follows:
44 . . .

45 (10) in interest-bearing notes or bonds of

1 The University of Texas issued under the laws of this
2 state;

3

4 Revised Law

5 Sec. 424.072. AUTHORIZED INVESTMENTS: BONDS ISSUED,
6 ASSUMED, OR GUARANTEED IN INTERNATIONAL MARKET. An insurer may
7 invest the insurer's funds in excess of minimum capital and surplus
8 in bonds issued, assumed, or guaranteed by any of the following
9 international financial institutions in which the United States is
10 a member:

- 11 (1) the Inter-American Development Bank;
12 (2) the International Bank for Reconstruction and
13 Development (the World Bank);
14 (3) the African Development Bank;
15 (4) the Asian Development Bank; or
16 (5) the International Finance Corporation. (V.T.I.C.
17 Art. 2.10-1, Sec. (1).)

18 Source Law

19 Art. 2.10-1. (1) In addition to the securities
20 authorized as investments in Article 2.10, a company
21 may also invest its funds over and above its minimum
22 capital and minimum surplus, as provided in Article
23 2.02, in bonds, issued, assumed, or guaranteed by
24 certain international financial institutions in which
25 the United States is a member, to wit: the
26 Inter-American Development Bank, the International
27 Bank for Reconstruction and Development (the World
28 Bank), the African Development Bank, the Asian
29 Development Bank, and the International Finance
30 Corporation.

31 Revisor's Note

32 (1) Section (1), V.T.I.C. Article 2.10-1,
33 authorizes an insurer to make certain investments
34 "[i]n addition to the securities authorized as
35 investments in Article 2.10." The revised law omits
36 the quoted language as unnecessary because an accepted
37 general principle of statutory construction requires a
38 statute to be given cumulative effect with other
39 statutes unless it provides otherwise or unless the
40 statutes are in conflict. The general principle
41 applies to this revision.

(2) Section (1), V.T.I.C. Article 2.10-1, authorizes an insurer to invest its funds in excess of its minimum capital and surplus "as provided in Article 2.02," the relevant parts of which are codified as Sections 822.054 and 822.210 of this code. The revised law omits the reference to Article 2.02 as unnecessary because Section 424.001 defines "minimum capital and surplus" for purposes of this chapter to mean the minimum amount of capital stock and minimum amount of surplus required of an insurer under those sections.

Revised Law

Sec. 424.073. AUTHORIZED INVESTMENTS: INSURER ENGAGED IN BUSINESS IN FOREIGN COUNTRY. (a) Subject to this section, an insurer authorized by the law of a foreign country to engage in a line of insurance in which the insurer is authorized to engage in this state may invest in foreign securities originating in the foreign country of the same kind as the domestic securities originating in the United States in which the insurer is authorized to invest under Sections 424.051, 424.053-424.071, and 424.074.

(b) The aggregate amount of an insurer's investments made under this section in a single country may not exceed by more than 10 percent at any time the lesser of:

(1) the amount of funds required by the law of the foreign country to be maintained in securities originating in that country; or

(2) the amount of total unearned premium reserves, reinsurance reserves, loss reserves, and any other liabilities required by the law of this state to be carried by the insurer that are directly attributable to the particular insurance policies or contracts on residents or property located in the foreign country.

(c) This section does not authorize an insurer to invest in a foreign security originating in a foreign country with respect to which the president of the United States or other federal authority

1 has refused to exercise the authority to issue guarantees on
2 projects in the country to citizens or corporations of the United
3 States against loss by reason of inconvertibility of currency,
4 expropriation, confiscation, war, revolution, or insurrection
5 because the foreign country has failed to enter into arrangements
6 for the security of American property as required by the president
7 or other federal authority for the issuance of those guarantees.
8 (V.T.I.C. Art. 2.10-2.)

9 Source Law

10 Art. 2.10-2. In addition to the securities
11 authorized as investments by Article 2.10 of the
12 Insurance Code, any insurer subject to the provisions
13 of Article 2.10 of the Insurance Code that is
14 authorized by the law of a foreign country to engage in
15 a line or lines of insurance which the insurer is
16 authorized to transact in this state may invest in the
17 same kinds of foreign securities originating in such
18 foreign country as would be authorized by Article 2.10
19 of the Insurance Code (as the same now exists or may be
20 amended in the future) for domestic securities
21 originating in the United States of America;
22 provided, however, that the aggregate investment made
23 under the provisions of this Article in any one country
24 shall not exceed by more than 10% at any time the
25 lesser of the following amounts:

26 (a) The funds required by the law of the
27 foreign country to be maintained in securities
28 originating in such country.

29 (b) The total unearned premium reserves,
30 reinsurance reserves, loss reserves and other
31 liabilities, if any, required by the law of this state
32 to be carried by the insurer that are directly
33 attributable to the particular policies or contracts
34 of insurance on residents or property located in the
35 foreign country.

36 Provided, however, this Article shall not
37 constitute authority to invest in foreign securities
38 originating in any foreign country where the President
39 of the United States or other federal authority is
40 authorized but has refused to issue on projects in the
41 country guarantees to citizens or corporations of the
42 United States of America guaranteeing against loss by
43 reason of inconvertibility of currency,
44 expropriation, confiscation, war, revolution or
45 insurrection because of the omission or failure of
46 such foreign country to enter into arrangements for
47 the security of American property required by the
48 federal authority for the issuance of such guarantees.

49 Revisor's Note

50 (1) V.T.I.C. Article 2.10-2 authorizes an
51 insurer to make certain investments "[i]n addition to
52 the securities authorized as investments by Article
53 2.10 of the Insurance Code." The revised law omits the

1 quoted language as unnecessary for the reason stated
2 in Revisor's Note (1) to Section 424.072.

3 (2) V.T.I.C. Article 2.10-2 refers to V.T.I.C.
4 Article 2.10 "as the same now exists or may be amended
5 in the future." The revised law omits this language
6 as unnecessary because Section 311.027, Government
7 Code (Code Construction Act), applicable to the
8 revised law, provides that "[u]nless expressly
9 provided otherwise, a reference to any portion of a
10 statute or rule applies to all reenactments,
11 revisions, or amendments of the statute or rule."

12 (3) V.T.I.C. Article 2.10-2 refers to the
13 "omission or failure" of a foreign country to enter
14 into arrangements for the security of American
15 property. The revised law omits the reference to
16 "omission" because in the context in which the term is
17 used, its meaning is included within the meaning of
18 "failure."

19 Revised Law

20 Sec. 424.074. OTHER SPECIFICALLY AUTHORIZED INVESTMENTS.
21 An insurer may invest the insurer's funds in excess of minimum
22 capital and surplus in:

23 (1) a savings account as authorized by Chapter 65,
24 Finance Code;

25 (2) a bond or other indebtedness as authorized by
26 Sections 435.045 and 435.046, Government Code;

27 (3) a bond issued under Subchapter B, Chapter 1505,
28 Government Code;

29 (4) a bond as authorized by Subchapter B, Chapter 284,
30 Transportation Code;

31 (5) a municipal bond issued under Sections 51.038 and
32 51.039, Water Code;

33 (6) an insured account or evidence of indebtedness as
34 authorized by Section 1, Chapter 160, General Laws, Acts of the 43rd

1 Legislature, Regular Session, 1933 (Article 842a, Vernon's Texas
2 Civil Statutes);

3 (7) an insured or guaranteed obligation as authorized
4 by Chapter 230, Acts of the 49th Legislature, Regular Session, 1945
5 (Article 842a-1, Vernon's Texas Civil Statutes);

6 (8) a bond issued under Section 1, Chapter 1, page 427,
7 General Laws, Acts of the 46th Legislature, Regular Session, 1939
8 (Article 1269k-1, Vernon's Texas Civil Statutes);

9 (9) a bond as authorized by Section 24, Chapter 110,
10 Acts of the 51st Legislature, Regular Session, 1949 (Article
11 8280-133, Vernon's Texas Civil Statutes);

12 (10) a bond as authorized by Section 19, Chapter 340,
13 Acts of the 51st Legislature, Regular Session, 1949 (Article
14 8280-137, Vernon's Texas Civil Statutes);

15 (11) a bond as authorized by Section 10, Chapter 398,
16 Acts of the 51st Legislature, Regular Session, 1949 (Article
17 8280-138, Vernon's Texas Civil Statutes);

18 (12) a bond as authorized by Section 18, Chapter 465,
19 Acts of the 51st Legislature, Regular Session, 1949 (Article
20 8280-139, Vernon's Texas Civil Statutes); or

21 (13) another investment specifically authorized by
22 law. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

23 Source Law

24 (e) No company . . . shall invest its funds over
25 and above its minimum capital and its minimum surplus
26 . . . in any other manner than as follows:

27 . . .
28 (13) in:

29 (A) insured accounts and evidences of
30 indebtedness as defined and limited by Section 1,
31 Chapter 618, page 1356, Acts of the 47th Legislature;

32 (B) shares or share accounts as
33 authorized by Chapter 65, Finance Code;

34 (C) insured or guaranteed
35 obligations as authorized in Chapter 230, Acts of the
36 49th Legislature, Regular Session, 1945 (Article
37 842a-1, Vernon's Texas Civil Statutes);

38 (D) bonds issued under the provisions
39 authorized by Section 9, Chapter 231, General Laws,
40 Acts of the 43rd Legislature, Regular Session, 1933
41 (Article 1187a, Vernon's Texas Civil Statutes);

42 (E) bonds issued under the authority
43 of Section 1, Chapter 1, page 427, General Laws, Acts
44 of the 46th Legislature, Regular Session, 1939

(Article 1269k-1, Vernon's Texas Civil Statutes);
(F) bonds and other indebtedness as authorized by Sections 435.045 and 435.046, Government Code;
(G) "Municipal Bonds" issued under Sections 51.038 and 51.039, Water Code;
(H) bonds as authorized by Subchapter B, Chapter 284, Transportation Code;
(I) bonds as authorized by Section 19, Chapter 340, Acts of the 51st Legislature, Regular Session, 1949;
(J) bonds as authorized by Section 10, Chapter 398, Acts of the 51st Legislature, Regular Session, 1949;
(K) bonds as authorized by Section 18, Chapter 465, Acts of the 51st Legislature, Regular Session, 1949;
(L) bonds as authorized by Section 24, Chapter 110, Acts of the 51st Legislature, Regular Session, 1949; and
(M) such other investments as are now or may hereafter be specifically authorized by law.

Revisor's Note

(1) Section (e)(13)(A), V.T.I.C. Article 2.10, refers to an insured account or evidence of indebtedness "as defined and limited by Section 1, Chapter 618, page 1356, Acts of the 47th Legislature." The revised law substitutes a reference to an insured account or evidence of indebtedness "as authorized by Section 1, Chapter 160, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 842a, Vernon's Texas Civil Statutes)" for the following reasons. Section 1, Chapter 618, page 1356, Acts of the 47th Legislature, includes provisions that amend statutes originally enacted by Section 1, Chapter 160, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 842a, Vernon's Texas Civil Statutes). A cite to the original enactment includes any subsequent revision of the cited statutes and clarifies in which articles those statutes are found in Vernon's Texas Civil Statutes.

(2) Section (e)(13)(B), V.T.I.C. Article 2.10, refers to "shares or share accounts" as authorized by Chapter 65, Finance Code. The revised law substitutes a reference to a "savings account" because that is the

1 term currently used by Chapter 65, Finance Code.

2 (3) Section (e)(13)(D), V.T.I.C. Article 2.10,
3 refers to a bond "issued under the provisions
4 authorized by Section 9, Chapter 231, General Laws,
5 Acts of the 43rd Legislature, Regular Session, 1933
6 (Article 1187a, Vernon's Texas Civil Statutes)." That
7 statute was codified in 1999 as Subchapter B, Chapter
8 1505, Government Code. The revised law is drafted
9 accordingly.

10 (4) Sections (e)(13)(I)-(L), V.T.I.C. Article
11 2.10, refer to certain bonds as authorized by various
12 provisions adopted during the Regular Session of the
13 51st Legislature in 1949. The revised law adds cites
14 to the articles in which those laws are found in
15 Vernon's Texas Civil Statutes.

16 (5) Section (e)(13)(M), V.T.I.C. Article 2.10,
17 refers to "such other investments as are now or may
18 hereafter be specifically authorized by law." The
19 revised law omits "as are now or may hereafter be" as
20 unnecessary. Section 311.027, Government Code (Code
21 Construction Act), applicable to the revised law,
22 states that a reference to a statute includes
23 reenactments, revisions, or amendments of that
24 statute. Consequently, for purposes of the law
25 revised in this section, an investment will be
26 considered "authorized by law" regardless of whether
27 the investment is authorized at the time this revision
28 takes effect or is authorized by subsequent
29 legislation.

30 [Sections 424.075-424.100 reserved for expansion]

31 SUBCHAPTER C. INVESTMENT POOLS

32 Revised Law

33 Sec. 424.101. DEFINITIONS. In this subchapter:

34 (1) "Business entity" means an association,

1 corporation, joint stock company, joint venture, limited liability
2 company, mutual fund trust, partnership, or other similar form of
3 business organization, regardless of whether organized for profit.

4 (2) "Obligation" means:

5 (A) a bond, note, debenture, trust certificate,
6 including an equipment certificate, or production payment;

7 (B) a negotiable bank certificate of deposit,
8 bankers' acceptance, credit tenant loan, or other loan secured by
9 financing net leases; or

10 (C) any other evidence of indebtedness for the
11 payment of money or participation certificates or other evidences
12 of an interest in an obligation otherwise described by this
13 subdivision, whether constituting a general obligation of the
14 issuer or payable only out of certain revenues or certain funds
15 pledged or otherwise dedicated for payment.

16 (3) "Qualified bank" means a national bank, state
17 bank, or trust company that:

18 (A) is at all times adequately capitalized as
19 determined by the standards adopted by the United States banking
20 regulators; and

21 (B) is either a member of the Federal Reserve
22 System or regulated by state banking laws.

23 (4) "Repurchase transaction," "reverse repurchase
24 transaction," and "securities lending transaction" have the
25 meanings assigned by Section 424.151. (V.T.I.C. Art. 2.10-5, Secs.
26 1(1), (5), (6), (7), (8), (9).)

27 Source Law

28 Art. 2.10-5

29 Sec. 1. In this article:

30 (1) "Business entity" means a corporation,
31 limited liability company, association, partnership,
32 joint stock company, joint venture, mutual fund trust,
33 or other similar form of business organization,
34 whether organized as for-profit or not-for-profit.

35 (5) "Obligation" means:

36 (A) a bond, note, debenture, trust
37 certificate (including an equipment certificate), or
38 production payment;

39 (B) a negotiable bank certificate of

1 deposit, bankers' acceptance, credit tenant loan, or
2 other loan secured by financing net leases; or

3 (C) any other evidence of
4 indebtedness for the payment of money or participation
5 certificates or other evidences of an interest in an
6 obligation described by this subdivision, whether
7 constituting a general obligation of the issuer or
8 payable only out of certain revenues or certain funds
9 pledged or otherwise dedicated for payment.

10 (6) "Qualified bank" means a national
11 bank, state bank, or trust company that at all times is
12 adequately capitalized as determined by the standards
13 adopted by the United States banking regulators and
14 that is either regulated by state banking laws or a
15 member of the Federal Reserve System.

16 (7) "Repurchase transaction" means a
17 transaction in which an insurer purchases securities
18 from a business entity that is obligated to repurchase
19 the purchased securities or equivalent securities from
20 the insurer at a specified price, either within a
21 specified period or on demand.

22 (8) "Reverse repurchase transaction"
23 means a transaction in which an insurer sells
24 securities to a business entity and is obligated to
25 repurchase the securities sold or equivalent
26 securities from the business entity at a specified
27 price, either within a specified period or on demand.

28 (9) "Securities lending transaction"
29 means a transaction in which securities are loaned by
30 an insurer to a business entity that is obligated to
31 return the loaned securities or equivalent securities
32 to the insurer, either within a specified period or on
33 demand.

34 Revisor's Note

35 Sections 1(7), (8), and (9), V.T.I.C. Article
36 2.10-5, define the terms "repurchase transaction,"
37 "reverse repurchase transaction," and "securities
38 lending transaction." V.T.I.C. Article 2.10-3A, which
39 regulates those activities, provides substantively
40 identical definitions for those terms in Sections
41 1(2), (3), and (4), revised in this chapter in Section
42 424.151. Consequently, for clarity and consistency,
43 the revised law simply states that in this subchapter,
44 the defined terms have the meanings assigned by
45 Section 424.151.

46 Revised Law

47 Sec. 424.102. AUTHORITY TO INVEST IN POOL. An insurer may
48 acquire investments and participate in an investment pool that is
49 qualified under Section 424.103(b) and the investments of which are
50 limited to investments authorized for:

1 (1) a short-term investment pool under Section
2 424.104; or

3 (2) an authorized investment pool under Section
4 424.107. (V.T.I.C. Art. 2.10-5, Sec. 2.)

5 Source Law

6 Sec. 2. An insurer may acquire investments and
7 participate in an investment pool that is qualified
8 under Section 5 of this article and the investments of
9 which are limited to investments authorized for a
10 short-term investment pool under Section 3 of this
11 article or for an authorized investment pool under
12 Section 4 of this article.

13 Revisor's Note

14 (1) Section 2, V.T.I.C. Article 2.10-5, refers
15 to an investment pool "qualified under Section 5" of
16 that article. Section 5 is revised in various sections
17 in this subchapter. Section 424.103(b) lists the
18 requirements for an investment pool to be qualified
19 and includes requirements that the pool manager and
20 pooling agreement comply with this subchapter, the
21 provisions of which are derived from the remaining
22 portions of Section 5 and specify requirements for
23 serving as the pool manager and for terms of the
24 pooling agreement. Therefore, the revised law
25 substitutes a reference to "Section 424.103(b)" for
26 the reference to "Section 5."

27 (2) Section 2, V.T.I.C. Article 2.10-5, refers
28 to investments authorized for a short-term investment
29 pool under "Section 3" of that article. Section 3 of
30 that article is revised in Sections 424.104, 424.105,
31 and 424.106. However, Section 424.104 requires
32 compliance with Sections 424.105 and 424.106.
33 Therefore, the revised law substitutes a reference to
34 "Section 424.104" for the reference to "Section 3."

35 Revised Law

36 Sec. 424.103. INVESTMENT POOL REQUIREMENTS AND
37 QUALIFICATIONS. (a) An investment pool must be a business entity.

1 (b) To be qualified, an investment pool must:

2 (1) have a written pooling agreement and a pool
3 manager that comply with the requirements of this subchapter; and

4 (2) comply with Subsection (c).

5 (c) The investment pool may not:

6 (1) acquire securities issued, assumed, guaranteed,
7 or insured by the investing insurer or an affiliate of the investing
8 insurer;

9 (2) borrow or incur indebtedness for borrowed money,
10 except for securities lending and reverse repurchase transactions
11 that meet the requirements of this subchapter; or

12 (3) permit the aggregate value of securities loaned or
13 sold to, purchased from, or invested in a single business entity at
14 the time of the loan, sale, purchase, or investment to exceed 10
15 percent of the pool's total assets. (V.T.I.C. Art. 2.10-5, Secs.
16 5(a), (b), (c), 6(a).)

17 Source Law

18 Sec. 5. (a) To be qualified, an investment
19 pool must comply with the requirements established
20 under this section.

21 (b) The investment pool may not:

22 (1) acquire securities issued, assumed,
23 guaranteed, or insured by the investing insurer or an
24 affiliate of the investing insurer;

25 (2) borrow or incur an indebtedness for
26 borrowed money, except for securities lending and
27 reverse repurchase transactions that meet the
28 requirements of this article; or

29 (3) permit the aggregate value of
30 securities then loaned or sold to, purchased from, or
31 invested in any one business entity under this section
32 to exceed 10 percent of the total assets of the
33 investment pool.

34 (c) The investment pool shall have a written
35 pooling agreement.

36 Sec. 6. (a) An investment pool must be a
37 business entity.

38 Revisor's Note

39 Section 5(a), V.T.I.C. Article 2.10-5, requires
40 an investment pool to "comply with the requirements
41 established under this section." Those requirements
42 are revised in part in provisions of this subchapter
43 that pertain to pooling agreement and pool manager

1 requirements and in part in Subsections (b) and (c) of
2 this section. The revised law is drafted accordingly.

3 Revised Law

4 Sec. 424.104. AUTHORIZED INVESTMENTS FOR SHORT-TERM
5 INVESTMENT POOL. A short-term investment pool may contain only:

6 (1) obligations described by Section 424.105;

7 (2) money market funds described by Section 424.106;

8 or

9 (3) repurchase, reverse repurchase, and securities
10 lending transactions that meet the requirements of Subchapter D.
11 (V.T.I.C. Art. 2.10-5, Sec. 3(a) (part).)

12 Source Law

13 Sec. 3. (a) A short-term investment pool may
14 contain only:

15 (1) . . . obligations that are rated one
16 or two by the securities valuation office . . . and
17 that have a remaining maturity of:

18 . . .
19 (2) government money market mutual funds
20 or class one money market mutual funds; or

21 (3) securities lending, repurchase, and
22 reverse repurchase transactions that meet the
23 requirements imposed under Article 2.10-3 of this
24 code.

25 Revisor's Note

26 Section 3(a)(3), V.T.I.C. Article 2.10-5, refers
27 to certain transactions that meet the requirements of
28 "Article 2.10-3 of this code." V.T.I.C. Article
29 2.10-3 was repealed by Chapter 1040, Acts of the 76th
30 Legislature, Regular Session, 1999. That legislation
31 also added V.T.I.C. Article 2.10-3A to regulate the
32 transactions previously regulated under Article
33 2.10-3. Consequently, the revised law substitutes a
34 reference to the subchapter in which V.T.I.C. Article
35 2.10-3A is revised for the reference to V.T.I.C.
36 Article 2.10-3.

37 Revised Law

38 Sec. 424.105. SHORT-TERM INVESTMENT POOL: CERTAIN
39 SHORT-TERM OBLIGATIONS. (a) Obligations contained in a short-term

1 investment pool must meet the requirements of this section.

2 (b) The obligations must:

3 (1) have a rating by the securities valuation office
4 of one or two, or an equivalent rating issued by a nationally
5 recognized statistical rating organization recognized by the
6 securities valuation office; or

7 (2) be issued by an issuer with outstanding
8 obligations that have a rating described by Subdivision (1).

9 (c) The obligations must have:

10 (1) a remaining maturity of 397 days or less or a put
11 that:

12 (A) entitles the holder to receive the principal
13 amount of the obligation; and

14 (B) may be exercised through maturity at
15 specified intervals not exceeding 397 days; or

16 (2) a remaining maturity of three years or less and a
17 floating interest rate that resets at least quarterly on the basis
18 of a current short-term index and is not subject to a maximum limit,
19 if the obligations do not have an interest rate that varies
20 inversely to market interest rate changes.

21 (d) For purposes of this section, a current short-term index
22 is:

23 (1) a federal funds rate;

24 (2) the prime rate;

25 (3) the rate for treasury bills;

26 (4) the London InterBank Offered Rate; or

27 (5) the rate for commercial paper. (V.T.I.C. Art.
28 2.10-5, Secs. 3(a) (part), (b), (c).)

29 Source Law

30 Sec. 3. (a) A short-term investment pool may
31 contain only:

32 (1) except as provided by Subsection (b)
33 of this section, obligations that are rated one or two
34 by the securities valuation office or that have a
35 rating equivalent to a securities valuation office
36 rating of one or two made by a statistical rating
37 organization that is nationally recognized and
38 recognized by the securities valuation office and that

1 have a remaining maturity of:

2 (A) 397 days or less or a put that
3 entitles the holder to receive the principal amount of
4 the obligation and that may be exercised through
5 maturity at specified intervals not exceeding 397
6 days; or

7 (B) three years or less and a
8 floating interest rate that resets not less frequently
9 than quarterly on the basis of a current short-term
10 index acceptable under Subsection (c) of this section
11 and is not subject to a maximum limit, if the
12 obligations do not have an interest rate that varies
13 inversely to market interest rate changes;

14
15 (b) In the absence of a one or two rating or
16 equivalent rating, the issuer of an obligation under
17 Subsection (a)(1) of this section must have
18 outstanding obligations rated one or two by the
19 securities valuation office or that have a rating
20 equivalent to a securities valuation office rating of
21 one or two made by a nationally recognized statistical
22 rating organization recognized by the securities
23 valuation office.

24 (c) For purposes of this section, a current
25 short-term index is:

- 26 (1) a federal funds rate;
27 (2) the prime rate;
28 (3) the rate for treasury bills;
29 (4) the London InterBank Offered Rate; or
30 (5) the rate for commercial paper.

31 Revised Law

32 Sec. 424.106. SHORT-TERM INVESTMENT POOL: CERTAIN MONEY
33 MARKET FUNDS. A short-term investment pool may contain a money
34 market fund as described by 17 C.F.R. Section 270.2a-7 under the
35 Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as
36 amended, that is:

37 (1) a government money market fund that at all times:

38 (A) invests only in obligations issued,
39 guaranteed, or insured by the United States or collateralized
40 repurchase agreements composed of those obligations; and

41 (B) qualifies for investment without a reserve
42 under the Purposes and Procedures Manual of the securities
43 valuation office or a successor publication; or

44 (2) a class one money market fund that at all times
45 qualifies for investment using the bond class one reserve factor
46 described by the Purposes and Procedures Manual of the securities
47 valuation office. (V.T.I.C. Art. 2.10-5, Secs. 1(2), (3), (4),
48 3(a) (part).)

Source Law

[Sec. 1]

(2) "Class one money market mutual fund" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor described by the purposes and procedures of the securities valuation office.

(3) "Government money market mutual fund" means a money market mutual fund that at all times:

(A) invests only in obligations issued, guaranteed, or insured by the United States or collateralized repurchase agreements composed of those obligations; and

(B) is qualified for investment without a reserve under the purposes and procedures publication of the securities valuation office or any successor publication.

(4) "Money market mutual fund" means a mutual fund that qualifies under 17 C.F.R. Part 270.2a-7, as authorized by the Investment Company Act of 1940 (15 U.S.C. Sections 80a-1 et seq.), as amended.

Sec. 3. (a) A short-term investment pool may contain only:

(2) government money market mutual funds or class one money market mutual funds; or

Revisor's Note

(1) Section 1(2), V.T.I.C. Article 2.10-5, refers to "the purposes and procedures of the securities valuation office." Other provisions revised in this chapter contain similar references. Throughout this chapter, the revised law substitutes "Purposes and Procedures Manual of the securities valuation office" for the quoted language because that is the correct name of the publication.

(2) Section 1(4), V.T.I.C. Article 2.10-5, defines "money market mutual fund" as a "mutual fund" that qualifies under "17 C.F.R. Part 270.2a-7, as authorized by the Investment Company Act of 1940 (15 U.S.C. Sections 80a-1 et seq.), as amended." Because 17 C.F.R. Section 270.2a-7 does not define or use the term "money market mutual fund," but does prescribe requirements for a registered investment company that holds itself out as a "money market fund," the revised law substitutes "money market fund" for "money market

1 mutual fund."

2 Revised Law

3 Sec. 424.107. AUTHORIZED INVESTMENTS FOR AUTHORIZED
4 INVESTMENT POOL; LIMITATION. (a) An authorized investment pool
5 may contain only investments that a participating insurer is
6 authorized to acquire by provisions of this code other than this
7 subchapter.

8 (b) The insurer's total of proportionate ownership
9 interests in a single authorized investment held by an authorized
10 investment pool and the insurer's direct investments in that
11 authorized investment may not exceed the limit prescribed by the
12 applicable authorizing provision.

13 (c) In addition to the limitation described by Subsection
14 (b), an insurer is subject to the limitations described by Section
15 424.108. (V.T.I.C. Art. 2.10-5, Sec. 4.)

16 Source Law

17 Sec. 4. Authorized investment pools are limited
18 to investments that a participating insurer is
19 authorized to acquire by other articles of this code.
20 The insurer's total of proportionate ownership
21 interests in any one authorized investment held by an
22 authorized investment pool, and direct investments in
23 the same authorized investment, may not exceed the
24 limit provided by the applicable authorizing article.
25 In addition to that limitation, an insurer is also
26 subject to the overall limitations contained in
27 Section 6(c) of this article.

28 Revised Law

29 Sec. 424.108. GENERAL INSURER INVESTMENT LIMITATIONS. An
30 insurer may not acquire an investment in an investment pool if, as a
31 result of and after making the investment, the aggregate amount of
32 investments held by the insurer under this subchapter at the time of
33 the investment:

34 (1) in a single investment pool would exceed 10
35 percent of the insurer's admitted assets;

36 (2) in all investment pools investing in investments
37 authorized under Section 424.107 would exceed 25 percent of the
38 insurer's admitted assets; or

39 (3) in all investment pools would exceed 35 percent of

1 the insurer's admitted assets. (V.T.I.C. Art. 2.10-5, Sec. 6(c).)

2 Source Law

3 (c) An insurer shall not acquire an investment
4 in an investment pool under this section if, as a
5 result of and after giving effect to that investment,
6 the aggregate amount of investments then held by the
7 insurer under this article:

8 (1) in any one investment pool would
9 exceed 10 percent of its admitted assets;

10 (2) in all investment pools investing in
11 investments permitted under Section 4 of this article
12 would exceed 25 percent of its admitted assets; or

13 (3) in all investment pools would exceed
14 35 percent of its admitted assets.

15 Revised Law

16 Sec. 424.109. DESIGNATION OF POOL MANAGER; QUALIFICATIONS.

17 (a) The pooling agreement for an investment pool must designate a
18 pool manager.

19 (b) The pool manager must be organized under the laws of the
20 United States or a state and must be:

21 (1) the investing insurer, an affiliated insurer, or a
22 business entity affiliated with the insurer;

23 (2) a qualified bank;

24 (3) a business entity registered under the Investment
25 Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), as amended;

26 (4) the attorney-in-fact of a reciprocal or
27 interinsurance exchange; or

28 (5) the United States manager or an affiliate or
29 subsidiary of the United States manager of a United States branch of
30 an alien insurer. (V.T.I.C. Art. 2.10-5, Sec. 5(d).)

31 Source Law

32 (d) The pooling agreement must designate a pool
33 manager. The pool manager must be organized under the
34 laws of the United States or a state and must be:

35 (1) the investing insurer, an affiliated
36 insurer, or a business entity affiliated with the
37 insurer;

38 (2) a qualified bank;

39 (3) a business entity registered under the
40 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1
41 et seq.), as amended;

42 (4) if a reciprocal insurer or
43 interinsurance exchange, its attorney-in-fact; or

44 (5) if a United States branch of an alien
45 insurer, its United States manager or an affiliate or
46 subsidiary of its United States manager.

1 Revisor's Note

2 Section 5(d), V.T.I.C. Article 2.10-5, refers to
3 a "reciprocal insurer or interinsurance exchange."
4 For consistency with terminology used throughout this
5 code, the revised law substitutes "reciprocal or
6 interinsurance exchange" for "reciprocal insurer or
7 interinsurance exchange."

8 Revised Law

9 Sec. 424.110. POOL MANAGER TO MAINTAIN ASSETS; CUSTODY
10 AGREEMENT. (a) The pool manager shall maintain the assets of the
11 investment pool in one or more accounts, in the name of or on behalf
12 of the pool, under a custody agreement with a qualified bank.

13 (b) The custody agreement must:

14 (1) state and recognize the claims and rights of each
15 participant;

16 (2) acknowledge that the investment pool's underlying
17 assets are held solely for the benefit of each participant in
18 proportion to the aggregate amount of the participant's investments
19 in the pool; and

20 (3) contain an agreement that the pool's underlying
21 assets may not be commingled with the general assets of the
22 custodian qualified bank or any other person. (V.T.I.C. Art.
23 2.10-5, Sec. 5(f).)

24 Source Law

25 (f) The pool manager shall maintain the assets
26 of the investment pool in one or more accounts, in the
27 name of or on behalf of the investment pool, under a
28 custody agreement with a qualified bank. The custody
29 agreement must:

30 (1) state and recognize the claims and
31 rights of each participant;

32 (2) acknowledge that the underlying assets
33 of the investment pool are held solely for the benefit
34 of each participant in proportion to the aggregate
35 amount of its investments in the investment pool; and

36 (3) contain an agreement that the
37 underlying assets of the investment pool may not be
38 commingled with the general assets of the custodian
39 qualified bank or any other person.

40 Revised Law

41 Sec. 424.111. POOLING AGREEMENT PROVISIONS. The pooling

1 agreement for an investment pool must provide that:

2 (1) 100 percent of the ownership interests in the pool
3 must at all times be held by:

4 (A) an insurer and the insurer's affiliated
5 insurers;

6 (B) for a pool investing solely in investments
7 authorized under Section 424.104, the insurer and the insurer's
8 subsidiaries and affiliates or any pension or profit-sharing plan
9 of the insurer and the insurer's subsidiaries and affiliates; or

10 (C) for a United States branch of an alien
11 insurer, subsidiaries or affiliates of the insurer's United States
12 manager;

13 (2) the pool's underlying assets are held solely for
14 the benefit of each participant and may not be commingled with the
15 general assets of the pool manager or any other person;

16 (3) each participant owns an undivided interest in the
17 pool's underlying assets in proportion to the aggregate amount of
18 the participant's interest in the pool; and

19 (4) a pool participant or, if a pool participant is
20 insolvent, bankrupt, or in receivership, the participant's
21 trustee, receiver, conservator, or other successor-in-interest may
22 withdraw all or any portion of the participant's investment from
23 the pool under the terms of the pooling agreement. (V.T.I.C. Art.
24 2.10-5, Sec. 5(g).)

25 Source Law

26 (g) The pooling agreement for the investment
27 pool must also provide that:

28 (1) 100 percent of the ownership interests
29 in the investment pool must at all times be held by:

30 (A) an insurer and its affiliated
31 insurers;

32 (B) in the case of an investment pool
33 investing solely in investments permitted under
34 Section 3 of this article, the insurer and its
35 subsidiaries and affiliates or any pension or
36 profit-sharing plan of the insurer, its subsidiaries,
37 and affiliates; or

38 (C) in the case of a United States
39 branch of an alien insurer, affiliates or subsidiaries
40 of its United States manager;

41 (2) the underlying assets of the
42 investment pool may not be commingled with the general

1 assets of the pool manager or any other person;

2 (3) each participant owns an undivided
3 interest in the underlying assets of the investment
4 pool in proportion to the aggregate amount of each pool
5 participant's interest in the investment pool and the
6 underlying assets of the investment pool are held
7 solely for the benefit of each participant; and

8 (4) a pool participant or, in the event of
9 the pool participant's insolvency, bankruptcy, or
10 receivership, its trustee, receiver, conservator, or
11 other successor-in-interest may withdraw all or any
12 portion of its investment from the pool under the terms
13 of the pooling agreement.

14 Revisor's Note

15 Section 5(g)(1)(B), V.T.I.C. Article 2.10-5,
16 refers to investments permitted under "Section 3" of
17 that article. The revised law substitutes a reference
18 to "Section 424.104" for the reason stated in Revisor's
19 Note (2) to Section 424.102.

20 Revised Law

21 Sec. 424.112. WITHDRAWALS AND DISTRIBUTIONS. (a) A pool
22 participant must be able to make withdrawals on demand without
23 penalty or other assessment on any business day, and settlement of
24 funds must occur within a reasonable and customary period that does
25 not exceed five business days after a withdrawal.

26 (b) The pooling agreement must provide that the pool manager
27 shall make a distribution to a pool participant, at the manager's
28 discretion:

29 (1) in cash in an amount equal to the fair market value
30 at the time of the distribution of the participant's pro rata share
31 of each of the pool's underlying assets;

32 (2) in kind in an amount equal to a pro rata share of
33 each underlying asset; or

34 (3) in a combination of cash and in-kind distributions
35 in an amount equal to a pro rata share of each underlying asset.

36 (c) A distribution under Subsection (b) must be computed
37 after subtracting all the investment pool's applicable fees and
38 expenses. (V.T.I.C. Art. 2.10-5, Secs. 6(d), (e), (f).)

39 Source Law

40 (d) A pool participant must be able to make
41 withdrawals on demand without penalty or other

1 assessment on any business day, and settlement of
2 funds must occur within a reasonable and customary
3 period after a withdrawal not to exceed five business
4 days.

5 (e) The pooling agreement must provide that the
6 pool manager shall make a distribution to a pool
7 participant, at the discretion of the pool manager:

8 (1) in cash the fair market value at the
9 time of the distribution of the participant's pro rata
10 share of each underlying asset of the investment pool;

11 (2) in kind a pro rata share of each
12 underlying asset; or

13 (3) in a combination of cash and in-kind
14 distributions a pro rata share in each underlying
15 asset.

16 (f) A distribution under Subsection (e) of this
17 section is computed in each case after subtracting all
18 applicable fees and expenses of the investment pool.

19 Revised Law

20 Sec. 424.113. INVESTMENT POOL RECORDS. The pool manager
21 shall compile and maintain:

22 (1) detailed accounting records that show:

23 (A) the cash receipts and disbursements
24 reflecting each pool participant's proportionate investment in the
25 investment pool; and

26 (B) a complete description of all the pool's
27 underlying assets, including the amount, interest rate, and
28 maturity date, if any, of each of those assets and other appropriate
29 designations; and

30 (2) other records that, on a daily basis, allow third
31 parties to verify each participant's investment in the pool.

32 (V.T.I.C. Art. 2.10-5, Sec. 5(e).)

33 Source Law

34 (e) The pool manager shall compile and maintain:

35 (1) detailed accounting records that set
36 forth:

37 (A) the cash receipts and
38 disbursements reflecting each pool participant's
39 proportionate investment in the investment pool; and

40 (B) a complete description of all
41 underlying assets of the investment pool, including
42 the amount, interest rate, and maturity date, if any,
43 of each of those assets and other appropriate
44 designations; and

45 (2) other records that, on a daily basis,
46 allow third parties to verify each pool participant's
47 investment in the investment pool.

48 Revised Law

49 Sec. 424.114. INSPECTION OF RECORDS. The pool manager

1 shall make records of the investment pool available for inspection
2 by the commissioner. (V.T.I.C. Art. 2.10-5, Sec. 6(g).)

3 Source Law

4 (g) The pool manager must make the records of
5 the investment pool available for inspection by the
6 commissioner.

7 Revised Law

8 Sec. 424.115. REPORTS OF TRANSACTIONS BETWEEN POOL AND
9 PARTICIPANT. (a) A transaction between an investment pool and a
10 pool participant is not subject to Subchapter C, Chapter 823,
11 except that before entering into a pool, an insurer subject to
12 Chapter 823 shall give the commissioner the written notice required
13 under Section 823.103.

14 (b) The investment pool's investment activities and the
15 transactions between the pool and a pool participant must be
16 reported in the registration statement required by Subchapter B,
17 Chapter 823. (V.T.I.C. Art. 2.10-5, Sec. 6(b).)

18 Source Law

19 (b) A transaction between the pool and a
20 participant in the pool is not subject to Section 4,
21 Article 21.49-1 of this code, except that, before
22 entering into a pool, an insurer subject to Article
23 21.49-1 of this code shall file the notice required
24 under Section 4(d)(2), Article 21.49-1 of this code.
25 Investment activities of the pool and transactions
26 between pools and participants shall be reported
27 annually in the registration statement required by
28 Section 3, Article 21.49-1 of this code.

29 Revisor's Note

30 (1) Section 6(b), V.T.I.C. Article 2.10-5,
31 provides that a transaction between an investment pool
32 and a pool participant is not subject to Section 4,
33 V.T.I.C. Article 21.49-1, with certain exceptions.
34 Section 4, Article 21.49-1, is revised in various
35 places in Chapter 823 of this code. The provisions of
36 that section that apply to transactions are revised as
37 Subchapter C, Chapter 823. The revised law is drafted
38 accordingly.

39 (2) Section 6(b), V.T.I.C. Article 2.10-5,

1 refers to the registration statement required by
2 Section 3, V.T.I.C. Article 21.49-1. Section 3,
3 Article 21.49-1, is revised in various places in
4 Chapter 823 of this code. The provisions of that
5 section that contained registration requirements are
6 revised as Subchapter B, Chapter 823. The revised law
7 is drafted accordingly.

8 [Sections 424.116-424.150 reserved for expansion]

9 SUBCHAPTER D. DOLLAR ROLL, REPURCHASE, REVERSE REPURCHASE,
10 AND SECURITIES LENDING TRANSACTIONS

11 Revised Law

12 Sec. 424.151. DEFINITIONS. In this subchapter:

13 (1) "Dollar roll transaction" means two simultaneous
14 transactions with settlement dates not more than 96 days apart, in
15 one of which an insurer sells to a business entity, and in the other
16 of which the insurer is obligated to purchase from the same business
17 entity, substantially similar securities that are:

18 (A) mortgage-backed securities issued, assumed,
19 or guaranteed by the Government National Mortgage Association, the
20 Federal National Mortgage Association, the Federal Home Loan
21 Mortgage Corporation, or a successor to one of those organizations;
22 or

23 (B) other mortgage-backed securities referred to
24 in 15 U.S.C. Section 77r-1 et seq., as amended.

25 (2) "Repurchase transaction" means a transaction in
26 which an insurer purchases securities from a business entity that
27 is obligated to repurchase the purchased securities or equivalent
28 securities from the insurer at a specified price, either within a
29 specified period or on demand.

30 (3) "Reverse repurchase transaction" means a
31 transaction in which an insurer sells securities to a business
32 entity and is obligated to repurchase the sold securities or
33 equivalent securities from the business entity at a specified
34 price, either within a specified period or on demand.

1 (4) "Securities lending transaction" means a
2 transaction in which an insurer lends securities to a business
3 entity that is obligated to return the loaned securities or
4 equivalent securities to the insurer, either within a specified
5 period or on demand. (V.T.I.C. Art. 2.10-3A, Sec. 1.)

6 Source Law

7 Art. 2.10-3A

8 Sec. 1. In this article:

9 (1) "Dollar roll transaction" means two
10 simultaneous transactions, with settlement dates not
11 more than 96 days apart, in one of which an insurer
12 sells to a business entity and in the other the insurer
13 is obligated to purchase from the same business entity
14 substantially similar securities of the following
15 types:

16 (A) mortgage-backed securities
17 issued, assumed, or guaranteed by the Government
18 National Mortgage Association, the Federal National
19 Mortgage Association, or the Federal Home Loan
20 Mortgage Corporation or their successor
21 organizations; or

22 (B) other mortgage-backed securities
23 described under Section 106, Title I, Secondary
24 Mortgage Market Enhancement Act of 1984 (15 U.S.C.
25 Section 77r-1), as amended.

26 (2) "Repurchase transaction" means a
27 transaction in which an insurer purchases securities
28 from a business entity that is obligated to repurchase
29 the purchased securities or equivalent securities from
30 the insurer at a specified price, either within a
31 specified period or on demand.

32 (3) "Reverse repurchase transaction"
33 means a transaction in which an insurer sells
34 securities to a business entity and is obligated to
35 repurchase the sold securities or equivalent
36 securities from the business entity at a specified
37 price, either within a specified period or on demand.

38 (4) "Securities lending transaction"
39 means a transaction in which securities are loaned by
40 an insurer to a business entity that is obligated to
41 return the loaned securities or equivalent securities
42 to the insurer, either within a specified period or on
43 demand.

44 Revisor's Note

45 Section 1(1)(B), V.T.I.C. Article 2.10-3A,
46 refers to "Section 106, Title I, Secondary Mortgage
47 Market Enhancement Act of 1984 (15 U.S.C. Section
48 77r-1)." The revised law omits the reference to
49 "Section 106, Title I, Secondary Mortgage Market
50 Enhancement Act of 1984" as unnecessary because it is
51 simply a cite to the provisions in which 15 U.S.C.
52 Section 77r-1 was originally enacted and does not add

any meaning to the substance of the law.

Revised Law

Sec. 424.152. TRANSACTIONS AUTHORIZED. An insurer may engage in dollar roll, repurchase, reverse repurchase, and securities lending transactions as provided by this subchapter. (V.T.I.C. Art. 2.10-3A, Sec. 2(a).)

Source Law

Sec. 2. (a) An insurer may engage in securities lending, repurchase, reverse repurchase, and dollar roll transactions as provided by this article.

Revised Law

Sec. 424.153. PERIOD OF TRANSACTION. An insurer must enter into a written agreement for each transaction under this subchapter, other than a dollar roll transaction. The agreement must require that the transaction terminate on or before the first anniversary of the transaction's inception. (V.T.I.C. Art. 2.10-3A, Sec. 2(b).)

Source Law

(b) The insurer shall enter into a written agreement for each transaction, other than a dollar roll transaction, that requires each transaction to terminate not later than the first anniversary of the inception of the transaction.

Revised Law

Sec. 424.154. CASH REQUIREMENTS. With respect to cash received in a transaction under this subchapter, an insurer shall:

(1) invest the cash in accordance with this subchapter and in a manner that recognizes the liquidity needs of the transaction; or

(2) use the cash for the insurer's general corporate purposes. (V.T.I.C. Art. 2.10-3A, Sec. 3(a).)

Source Law

Sec. 3. (a) Cash received in a transaction under this article must be:

(1) invested in accordance with this article and in a manner that recognizes the liquidity needs of the transaction; or

(2) used by the insurer for the insurer's general corporate purposes.

1 Revised Law

2 Sec. 424.155. COLLATERAL REQUIREMENTS. (a) While a
3 transaction under this subchapter is outstanding, the insurer or
4 the insurer's agent or custodian shall maintain, as to acceptable
5 collateral received in the transaction, either physically or
6 through the book-entry system of the Federal Reserve, Depository
7 Trust Company, Participants Trust Company, or another securities
8 depository approved by the commissioner:

9 (1) possession of the collateral;

10 (2) a perfected security interest in the collateral;

11 or

12 (3) in the case of a jurisdiction outside of the United
13 States, title to, or the rights of a secured creditor to, the
14 collateral.

15 (b) The amount of collateral required for repurchase,
16 reverse repurchase, and securities lending transactions is the
17 amount required under the Purposes and Procedures Manual of the
18 securities valuation office or a successor publication. (V.T.I.C.
19 Art. 2.10-3A, Secs. 3(b), (e).)

20 Source Law

21 (b) While the transaction is outstanding, the
22 insurer, or the insurer's agent or custodian, shall
23 maintain, as to acceptable collateral received in a
24 transaction under this section, either physically or
25 through the book entry systems of the Federal Reserve,
26 Depository Trust Company, Participants Trust Company,
27 or other securities depositories approved by the
28 commissioner:

29 (1) possession of the acceptable
30 collateral;

31 (2) a perfected security interest in the
32 acceptable collateral; or

33 (3) in the case of a jurisdiction outside
34 of the United States, title to, or rights of a secured
35 creditor to, the acceptable collateral.

36 (e) The amount of collateral required for a
37 securities lending, repurchase, or reverse repurchase
38 transaction is the amount required under the Purposes
39 and Procedures Manual of the Securities Valuation
40 Office or a successor publication.

41 Revisor's Note

42 Section 3(b), V.T.I.C. Article 2.10-3A,
43 establishes certain requirements with respect to

1 collateral received in a transaction under "this
2 section." The revised law applies those requirements
3 to collateral received in a transaction under "this
4 subchapter" because it is clear from the context in
5 which "this section" appears that it is intended to
6 refer to transactions authorized by Article 2.10-3A,
7 revised as this subchapter.

8 Revised Law

9 Sec. 424.156. PERCENTAGE LIMITATIONS. (a) An insurer may
10 not enter into a transaction under this subchapter if, as a result
11 of and after making the transaction, the aggregate amount of
12 securities loaned or sold to or purchased from:

13 (1) a single business entity counterparty under this
14 subchapter would exceed five percent of the insurer's assets; or

15 (2) all business entities under this subchapter would
16 exceed 40 percent of the insurer's assets.

17 (b) In computing the amount sold to or purchased from a
18 business entity counterparty under a repurchase or reverse
19 repurchase transaction, effect may be given to netting provisions
20 under a master written agreement. (V.T.I.C. Art. 2.10-3A, Secs.
21 3(c), (d).)

22 Source Law

23 (c) An insurer may not enter into a transaction
24 under this article if, as a result of and after giving
25 effect to the transaction, the aggregate amount of
26 securities loaned, sold to, or purchased from:

27 (1) any one business entity counterparty
28 under this article would exceed five percent of the
29 insurer's assets; or

30 (2) all business entities under this
31 article would exceed 40 percent of the insurer's
32 assets.

33 (d) In computing the amount sold to or purchased
34 from a business entity counterparty under a repurchase
35 or reverse repurchase transaction, effect may be given
36 to netting provisions under a master written
37 agreement.

38 Revised Law

39 Sec. 424.157. RULES. The commissioner may adopt reasonable
40 rules and issue reasonable orders as necessary to implement this
41 subchapter. (V.T.I.C. Art. 2.10-3A, Sec. 3(f).)

Source Law

(f) The commissioner may adopt reasonable rules and orders consistent with, and as necessary to implement, this article.

Revisor's Note

(1) Section 3(f), V.T.I.C. Article 2.10-3A, authorizes the commissioner of insurance to adopt rules and orders consistent with and as necessary to implement Article 2.10-3A. For consistency with the terminology used in this code, the revised law substitutes "issue" for "adopt" in relation to orders.

(2) Section 3(f), V.T.I.C. Article 2.10-3A, authorizes the commissioner of insurance to adopt reasonable rules and orders "consistent with" and as necessary to implement Article 2.10-3A. A rule or order must be consistent with the law under which the rule is adopted or the order is issued. The revised law, therefore, omits the quoted language as unnecessary.

[Sections 424.158-424.200 reserved for expansion]

SUBCHAPTER E. RISK CONTROL TRANSACTIONS

Revised Law

Sec. 424.201. DEFINITIONS. In this subchapter:

(1) "Acceptable collateral" means:

(A) cash;

(B) cash equivalents;

(C) letters of credit and direct obligations; or

(D) securities that are fully guaranteed as to

principal and interest by the United States.

(2) "Business entity" includes an association, bank, corporation, joint stock company, joint tenancy, joint venture, limited liability company, mutual fund, partnership, sole proprietorship, trust, or other similar form of business organization, regardless of whether organized for profit.

(3) "Cap" means an agreement obligating the seller to

1 make payments to the buyer, with each payment based on the amount by
2 which a reference price or level or the performance or value of one
3 or more underlying interests exceeds a predetermined number that is
4 sometimes called the strike rate or strike price.

5 (4) "Cash equivalent" means an investment or security
6 that is short-term, highly rated, highly liquid, and readily
7 marketable. The term includes a money market fund described by
8 Section 424.106. For purposes of this subdivision, an investment
9 or security is:

10 (A) short-term if it has a remaining term to
11 maturity of one year or less; and

12 (B) highly rated if it has:

13 (i) a rating of "P-1" by Moody's Investors
14 Service, Inc.;

15 (ii) a rating of "A-1" by the Standard and
16 Poor's Division of the McGraw Hill Companies, Inc.; or

17 (iii) an equivalent rating by a nationally
18 recognized statistical rating organization recognized by the
19 securities valuation office.

20 (5) "Collar" means an agreement to receive payments as
21 the buyer of a cap, floor, or option and to make payments as the
22 seller of a different cap, floor, or option.

23 (6)(A) "Counterparty exposure amount" means:

24 (i) for an over-the-counter derivative
25 instrument not entered into under a written master agreement that
26 provides for netting of payments owed by the respective parties,
27 the market value of the over-the-counter derivative instrument, if
28 the liquidation of the derivative instrument would result in a
29 final cash payment to the insurer, or zero, if the liquidation of
30 the derivative instrument would not result in a final cash payment
31 to the insurer; or

32 (ii) for an over-the-counter derivative
33 instrument entered into under a written master agreement that
34 provides for netting of payments owed by the respective parties and

1 for which the counterparty's domiciliary jurisdiction is within the
2 United States or a foreign jurisdiction listed in the Purposes and
3 Procedures Manual of the securities valuation office as eligible
4 for netting, the greater of zero or the net sum payable to the
5 insurer in connection with all derivative instruments subject to
6 the written master agreement on the liquidation of the instruments
7 in the event of the counterparty's default under the master
8 agreement, if there is no condition precedent to the counterparty's
9 obligation to make the payment and if there is no setoff of amounts
10 payable under another instrument or agreement.

11 (B) For purposes of this subdivision, market
12 value or the net sum payable, as applicable, must be determined at
13 the end of the most recent quarter of the insurer's fiscal year and
14 must be reduced by the market value of acceptable collateral held by
15 the insurer or a custodian on the insurer's behalf.

16 (7) "Derivative instrument":

17 (A) means an agreement, option, or instrument, or
18 a series or combination of agreements, options, or instruments:

19 (i) to make or take delivery of, or assume
20 or relinquish, a specified amount of one or more underlying
21 interests, or to make a cash settlement instead of making or taking
22 delivery of, or assuming or relinquishing, a specified amount of an
23 underlying interest; or

24 (ii) that has a price, performance, value,
25 or cash flow based primarily on the actual or expected price, yield,
26 level, performance, value, or cash flow of one or more underlying
27 interests;

28 (B) includes an option, a warrant not otherwise
29 permitted to be held by the insurer under this subchapter, a cap, a
30 floor, a collar, a swap, a swaption, a forward, a future, any other
31 substantially similar agreement, option, or instrument, and a
32 series or combination of those agreements, options, or instruments;
33 and

34 (C) does not include a collateralized mortgage

1 obligation, another asset-backed security, a principal-protected
2 structured security, a floating rate security, an instrument that
3 an insurer would otherwise be authorized to invest in or receive
4 under a provision of this subchapter other than this subdivision,
5 or a debt obligation of the insurer.

6 (8) "Derivative transaction" means a transaction
7 involving the use of one or more derivative instruments. The term
8 does not include a dollar roll transaction, repurchase transaction,
9 reverse repurchase transaction, or securities lending transaction.

10 (9) "Floor" means an agreement obligating the seller
11 to make payments to the buyer, each of which is based on the amount
12 by which a predetermined number that is sometimes called the floor
13 price or floor rate exceeds a reference level, performance, price,
14 or value of one or more underlying interests.

15 (10) "Forward" means an agreement to make or take
16 delivery in the future of one or more underlying interests, or to
17 effect a cash settlement, based on the actual or expected level,
18 performance, price, or value of those interests. The term does not
19 include a future or a spot transaction effected within a customary
20 settlement period, a when-issued purchase, or another similar cash
21 market transaction.

22 (11) "Future" means an agreement traded on a futures
23 exchange to make or take delivery of one or more underlying
24 interests, or to effect a cash settlement, based on the actual or
25 expected level, performance, price, or value of those interests.

26 (12) "Futures exchange" means a foreign or domestic
27 exchange, contract market, or board of trade on which trading in
28 futures is conducted and that, in the United States, is authorized
29 to conduct that trading by the Commodity Futures Trading Commission
30 or a successor to that agency.

31 (13) "Hedging transaction" means a derivative
32 transaction entered into and maintained to manage, with respect to
33 an asset, liability, or portfolio of assets or liabilities, that an
34 insurer has acquired or incurred or anticipates acquiring or

1 incurring:

2 (A) the risk of a change in value, yield, price,
3 cash flow, or quantity; or

4 (B) the currency exchange rate risk.

5 (14) "Income generation transaction" means a
6 derivative transaction entered into to generate income. The term
7 does not include a hedging transaction or a replication
8 transaction.

9 (15) "Market value" means the price for a security or
10 derivative instrument obtained from a generally recognized source,
11 the most recent quotation from a generally recognized source, or if
12 a generally recognized source does not exist, the price determined
13 under the terms of the instrument or in good faith by the insurer,
14 as can be reasonably demonstrated to the commissioner on request,
15 plus the amount of accrued but unpaid income on the security or
16 instrument to the extent that amount is not included in the price as
17 of the date the security or instrument is valued.

18 (16) "Option" means an agreement giving the buyer the
19 right to buy or receive, referred to as a "call option," to sell or
20 deliver, referred to as a "put option," to enter into, extend, or
21 terminate, or to effect a cash settlement based on the actual or
22 expected level, performance, price, spread, or value of, one or
23 more underlying interests.

24 (17) "Over-the-counter derivative instrument" means a
25 derivative instrument entered into with a business entity in a
26 manner other than through a securities exchange or futures exchange
27 or cleared through a qualified clearinghouse.

28 (18) "Potential exposure" means:

29 (A) as to a futures position, the amount of
30 initial margin required for that position; or

31 (B) as to a swap, collar, or forward, one-half of
32 one percent multiplied by the notional amount multiplied by the
33 square root of the remaining years to maturity.

34 (19) "Qualified clearinghouse" means a clearinghouse

1 that:

2 (A) is subject to the rules of a securities
3 exchange or a futures exchange; and

4 (B) provides clearing services, including acting
5 as a counterparty to each of the parties to a transaction in a
6 manner that eliminates the parties' credit risk to each other.

7 (20) "Replication transaction" means a derivative
8 transaction or a combination of derivative transactions effected
9 separately or in conjunction with cash market investments included
10 in the insurer's investment portfolio to replicate the risks and
11 returns of another authorized transaction, investment, or
12 instrument or to operate as a substitute for cash market
13 transactions. The term does not include a hedging transaction.

14 (21) "Securities exchange" means:

15 (A) an exchange registered as a national
16 securities exchange or a securities market registered under the
17 Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as
18 amended;

19 (B) the Private Offerings, Resales and Trading
20 through Automated Linkages system; or

21 (C) a designated offshore securities market as
22 defined by 17 C.F.R. Section 230.902, as amended.

23 (22) "Swap" means an agreement to exchange or to net
24 payments at one or more times based on the actual or expected price,
25 yield, level, performance, or value of one or more underlying
26 interests.

27 (23) "Swaption" means an option to purchase or sell a
28 swap at a given price and time or at a series of prices and times.
29 The term does not include a swap with an embedded option.

30 (24) "Underlying interest" means an asset, liability,
31 or other interest underlying a derivative instrument or a
32 combination of those assets, liabilities, or interests. The term
33 includes a security, currency, rate, index, commodity, or
34 derivative instrument.

(25) "Warrant" means an instrument under which the holder has the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times stated in the warrant. (V.T.I.C. Art. 2.10-4, Sec. 1.)

Source Law

Art. 2.10-4

Sec. 1. In this article:

(1) "Acceptable collateral" means:

- (A) cash;
- (B) cash equivalents;
- (C) letters of credit and direct obligations; and
- (D) securities that are fully guaranteed as to principal and interest by the United States.

(2) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, bank, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit.

(3) "Cap" means an agreement under which a seller is obligated to make payments to the buyer with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.

(4) "Cash equivalent" means an investment or security that is short-term, highly rated, highly liquid, and readily marketable. The term includes money market funds as described by Article 2.10 of this code. For purposes of this subdivision:

(A) a short-term investment is an investment with a remaining term to maturity of one year or less; and

(B) a highly rated investment is an investment rated:

(i) "P-1" by Moody's Investors Service, Inc.;

(ii) "A-1" by the Standard and Poor's Division of the McGraw Hill Companies, Inc.; or

(iii) an equivalent rating by a nationally recognized statistical rating organization recognized by the Securities Valuation Office.

(5) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor.

(6)(A) "Counterparty exposure amount" means:

(i) for an over-the-counter derivative instrument that is not entered into under a written master agreement that provides for netting of payments owed by the respective parties:

(a) the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(b) zero if the liquidation of the derivative instrument would not

1 result in a final cash payment to the insurer; or
2 (ii) for an over-the-counter
3 derivative instrument that is entered into under a
4 written master agreement that provides for netting of
5 payments owed by the respective parties and in which
6 the domiciliary jurisdiction of the counterparty is
7 either in the United States or in a foreign
8 jurisdiction listed in the Purposes and Procedures
9 Manual of the Securities Valuation Office as eligible
10 for netting, the greater of:

11 (a) zero; or
12 (b) the net sum payable to
13 the insurer in connection with all derivative
14 instruments subject to the written master agreement on
15 their liquidation in the event of default by the
16 counterparty under the master agreement, if there are
17 no conditions precedent to the obligations of the
18 counterparty to make such a payment and no setoff of
19 amounts payable under any other instrument or
20 agreement.

21 (B) For purposes of this subdivision,
22 the market value or the net sum payable, as applicable,
23 is determined at the end of the most recent quarter of
24 the insurer's fiscal year and is reduced by the market
25 value of acceptable collateral held by the insurer or a
26 custodian on the insurer's behalf.

27 (7) "Derivative instrument" means an
28 agreement, option, or instrument, or any series or
29 combination of agreements, options, or instruments, to
30 make or take delivery of, or assume or relinquish, a
31 specified amount of one or more underlying interests,
32 or instead to make a cash settlement, or that has a
33 price, performance, value, or cash flow based
34 primarily on the actual or expected price, yield,
35 level, performance, value, or cash flow of one or more
36 underlying interests. The term includes an option, a
37 warrant not otherwise permitted to be held by the
38 insurer under this article, a cap, a floor, a collar, a
39 swap, a swaption, a forward, a future, and any other
40 substantially similar agreement, option, or
41 instrument or series or combinations of those
42 agreements, options, or instruments. The term does
43 not include a collateralized mortgage obligation,
44 another asset-backed security, a principal-protected
45 structured security, a floating rate security, an
46 instrument that an insurer is otherwise permitted to
47 invest in or receive under this article other than
48 under this definition, or any debt obligation of the
49 insurer.

50 (8) "Derivative transaction" means a
51 transaction that involves the use of one or more
52 derivative instruments. The term does not include a
53 dollar roll transaction, repurchase transaction,
54 reverse repurchase transaction, or securities lending
55 transaction.

56 (9) "Floor" means an agreement under which
57 the seller is obligated to make payments to the buyer
58 and in which each payment is based on the amount by
59 which a predetermined number, sometimes called the
60 floor rate or price, exceeds a reference price, level,
61 performance, or value of one or more underlying
62 interests.

63 (10) "Forward" means an agreement to make
64 or take delivery in the future of one or more
65 underlying interests, or effect a cash settlement,
66 based on the actual or expected price, level,
67 performance, or value of those underlying interests.
68 The term does not include a future or a spot

1 transaction effected within customary settlement
2 periods, when-issued purchases, or other similar cash
3 market transactions.

4 (11) "Future" means an agreement that is
5 traded on a futures exchange to make or take delivery
6 of, or effect a cash settlement, based on the actual or
7 expected price, level, performance, or value of, one
8 or more underlying interests.

9 (12) "Futures exchange" means a foreign or
10 domestic exchange, contract market, or board of trade
11 on which trading in futures is conducted and that, in
12 the United States, is authorized to conduct that
13 trading by the Commodities Futures Trading Commission
14 or any successor organization.

15 (13) "Hedging transaction" means a
16 derivative transaction that is entered into and
17 maintained to manage:

18 (A) the risk of a change in the value,
19 yield, price, cash flow, or quantity of assets or
20 liabilities, or a portfolio of assets or liabilities,
21 that the insurer has acquired or incurred or
22 anticipates acquiring or incurring; or

23 (B) the currency exchange rate risk
24 related to assets or liabilities, or a portfolio of
25 assets or liabilities, that an insurer has acquired or
26 incurred or anticipates acquiring or incurring.

27 (14) "Income generation transaction"
28 means a derivative transaction that is entered into to
29 generate income. The term does not include a
30 derivative transaction entered into as a hedging
31 transaction or a replication transaction.

32 (15) "Market value" means the price for a
33 security or derivative instrument obtained from a
34 generally recognized source or the most recent
35 quotation from such a source or, if a generally
36 recognized source does not exist, the price for the
37 security or derivative instrument as determined under
38 the terms of the instrument or in good faith by the
39 insurer, as can be reasonably demonstrated to the
40 commissioner on request, plus accrued but unpaid
41 income on the security or derivative instrument to the
42 extent not included in the price as of the applicable
43 date.

44 (16) "Option" means an agreement under
45 which the buyer has the right to buy or receive,
46 referred to as a "call option," sell or deliver,
47 referred to as a "put option," enter into, extend or
48 terminate, or effect a cash settlement based on the
49 actual or expected price, spread, level, performance,
50 or value of one or more underlying interests.

51 (17) "Over-the-counter derivative
52 instrument" means a derivative instrument entered into
53 with a business entity other than through a securities
54 exchange or futures exchange or cleared through a
55 qualified clearinghouse.

56 (18) "Potential exposure" means:

57 (A) as to a futures position, the
58 amount of initial margin required for that position;
59 or

60 (B) as to swaps, collars, and
61 forwards, one-half percent times the notional amount
62 times the square root of the remaining years to
63 maturity.

64 (19) "Qualified clearinghouse" means a
65 clearinghouse that is subject to the rules of a
66 securities exchange or a futures exchange and provides
67 clearing services, including acting as a counterparty
68 to each of the parties to a transaction in such a

manner that the parties no longer have credit risk to each other.

(20) "Replication transaction" means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's investment portfolio to replicate the risks and returns of another authorized transaction, investment, or instrument or to operate as a substitute for a cash market transaction. The term does not include a derivative transaction entered into by the insurer as a hedging transaction.

(21) "Securities exchange" means:

(A) an exchange registered as a national securities exchange or a securities market registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(B) the Private Offerings Resales and Trading through Automated Linkages (PORTAL); or

(C) a designated offshore securities market as defined by Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended.

(22) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, yield, level, performance, or value of one or more underlying interests.

(23) "Swaption" means an option to purchase or sell a swap at a given price and time or at a series of prices and times. The term does not include a swap with an embedded option.

(24) "Underlying interest" means the assets, liabilities, or other interests, or a combination of those assets, liabilities, or other interests, that underlie a derivative instrument. The term includes securities, currencies, rates, indices, commodities, or derivative instruments.

(25) "Warrant" means an instrument under which the holder has the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times stated in the warrant.

Revisor's Note

Section (1)(21)(C), V.T.I.C. Article 2.10-4, refers to a designated offshore securities market as defined by "Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended." For the reader's convenience, the revised law substitutes for the quoted language a more specific reference to 17 C.F.R. Section 230.902, which contains the definition of "designated offshore securities market."

Revised Law

Sec. 424.202. RISK CONTROL TRANSACTIONS AUTHORIZED. (a) Except as provided by Subsection (b), an insurer may engage in a risk control transaction authorized by this subchapter to:

(1) protect the insurer's assets against the risk of

1 changing asset values or interest rates;

2 (2) reduce risk; and

3 (3) generate income.

4 (b) An insurer with a statutory net capital and surplus as
5 determined by the insurer's most recent financial statement
6 required to be filed with the department that is less than the
7 minimum amount of capital and surplus required for a new charter and
8 certificate of authority for the same type of insurer may not engage
9 in a transaction authorized under this subchapter. (V.T.I.C. Art.
10 2.10-4, Secs. 2(a), 8(b), (c).)

11 Source Law

12 Sec. 2. (a) Except as provided by Section 8 of
13 this article, an insurer may, for purposes of
14 protecting the assets owned by the insurer against the
15 risk of changing asset values or interest rates and for
16 risk reduction and income generation, engage in risk
17 control transactions authorized under this article.

18 [Sec. 8]

19 (b) An insurer with a statutory net capital and
20 surplus less than the minimum amount of capital and
21 surplus required for a new charter and certificate of
22 authority for the same type of insurer may not engage
23 in the transactions authorized under this article.

24 (c) For purposes of this section, net capital
25 and surplus are determined by the most recent
26 financial statement of the insurer required to be
27 filed with the department.

28 Revised Law

29 Sec. 424.203. NOTICE OF INTENT TO ENGAGE IN RISK CONTROL
30 TRANSACTIONS REQUIRED. (a) Before an insurer with a statutory net
31 capital and surplus of less than \$10 million engages in a
32 transaction authorized under this subchapter, the insurer shall
33 file a written notice with the commissioner describing:

34 (1) the need to engage in the transaction;

35 (2) the lack of acceptable alternatives; and

36 (3) the insurer's plan to engage in the transaction.

37 (b) If the commissioner does not issue an order prohibiting
38 an insurer who files a notice under Subsection (a) from engaging in
39 the transaction on or before the 90th day after the date the
40 commissioner receives the notice, the insurer may engage in the
41 transaction described in the notice.

1 (c) For purposes of this section, an insurer's net capital
2 and surplus are determined by the insurer's most recent financial
3 statement required to be filed with the department. (V.T.I.C. Art.
4 2.10-4, Secs. 8(a), (c).)

5 Source Law

6 Sec. 8. (a) Before engaging in a transaction
7 authorized under this article, an insurer that has a
8 statutory net capital and surplus of less than \$10
9 million shall file a written notice with the
10 commissioner describing the need to engage in the
11 transaction, the lack of acceptable alternatives, and
12 the insurer's plan to engage in the transaction. If
13 the commissioner does not issue an order prohibiting
14 the insurer from engaging in the transaction within 90
15 days after the date of receipt of the insurer's notice,
16 the insurer may engage in the transaction described in
17 the notice.

18 (c) For purposes of this section, net capital
19 and surplus are determined by the most recent
20 financial statement of the insurer required to be
21 filed with the department.

22 Revised Law

23 Sec. 424.204. TRADING REQUIREMENTS FOR DERIVATIVE
24 INSTRUMENTS. Each derivative instrument must be:

- 25 (1) traded on a securities exchange;
26 (2) entered into with, or guaranteed by, a business
27 entity;
28 (3) issued or written by, or entered into with, the
29 issuer of the underlying interest on which the derivative
30 instrument is based; or
31 (4) in the case of futures, traded through a broker who
32 is:

33 (A) registered as a futures commission merchant
34 under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), as
35 amended; or

36 (B) exempt from that registration under 17 C.F.R.
37 Section 30.10, adopted under the Commodity Exchange Act (7 U.S.C.
38 Section 1 et seq.), as amended. (V.T.I.C. Art. 2.10-4, Sec. 6.)

39 Source Law

40 Sec. 6. Each derivative instrument must be:
41 (1) traded on a securities exchange;
42 (2) entered into with, or guaranteed by, a

business entity;

(3) issued or written by, or entered into with, the issuer of the underlying interest on which the derivative instrument is based; or

(4) in the case of futures, traded through a broker who is registered as a futures commission merchant under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), as amended, or who is exempt from that registration under 17 C.F.R. Rule 30.10, adopted under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), as amended.

Revised Law

Sec. 424.205. DERIVATIVE USE PLAN. (a) Before an insurer enters into a derivative transaction, the insurer's board of directors must approve a derivative use plan as part of the insurer's investment plan otherwise required by law.

(b) The derivative use plan must:

(1) describe investment objectives and risk constraints, such as counterparty exposure amounts;

(2) define permissible transactions, identifying the risks to be hedged and the assets or liabilities being replicated; and

(3) require compliance with the insurer's internal control procedures established under Section 424.206. (V.T.I.C. Art. 2.10-4, Sec. 2(b).)

Source Law

(b) Before entering into a derivative transaction, the board of directors of the insurer must approve a derivative use plan as part of the insurer's investment plan otherwise required by law. The derivative use plan must:

(1) describe investment objectives and risk constraints, such as counterparty exposure amounts;

(2) define permissible transactions, identifying the risks to be hedged and the assets or liabilities being replicated; and

(3) require compliance with the insurer's internal control procedures established under Subsection (c) of this section.

Revised Law

Sec. 424.206. INTERNAL CONTROL PROCEDURES. An insurer that enters into a derivative transaction shall establish written internal control procedures that require:

(1) a quarterly report to the board of directors that reviews:

1 (A) each derivative transaction entered into,
2 outstanding, or closed out;

3 (B) the results and effectiveness of the
4 derivatives program; and

5 (C) the credit risk exposure to each counterparty
6 for over-the-counter derivative transactions based on the
7 counterparty exposure amount;

8 (2) a system for determining whether hedging or
9 replication strategies used by the insurer have been effective;

10 (3) a system of reports, at least as frequent as
11 monthly, to the insurer's management, that include:

12 (A) a description of each derivative transaction
13 entered into, outstanding, or closed out during the period since
14 the last report;

15 (B) the purpose of each outstanding derivative
16 transaction;

17 (C) a performance review of the derivative
18 instrument program; and

19 (D) the counterparty exposure amount for each
20 over-the-counter derivative transaction;

21 (4) a written authorization that identifies the
22 responsibilities and limitations of authority of each person
23 authorized to effect and maintain derivative transactions; and

24 (5) appropriate documentation for each transaction,
25 including:

26 (A) the purpose of the transaction;

27 (B) the assets or liabilities to which the
28 transaction relates;

29 (C) the specific derivative instrument used in
30 the transaction;

31 (D) for an over-the-counter derivative
32 transaction, the name of the counterparty and the counterparty
33 exposure amount; and

34 (E) for an exchange-traded derivative

1 instrument, the name of the exchange and the name of the firm that
2 handled the transaction. (V.T.I.C. Art. 2.10-4, Sec. 2(c).)

3 Source Law

4 (c) The insurer shall establish written
5 internal control procedures that require:

6 (1) a quarterly report to be made to the
7 board of directors that reviews:

8 (A) all derivative transactions
9 entered into, outstanding, or closed out;

10 (B) the results and effectiveness of
11 the derivatives program; and

12 (C) the credit risk exposure to each
13 counterparty for over-the-counter derivative
14 transactions based on the counterparty exposure
15 amount;

16 (2) a system for determining whether
17 hedging or replication strategies used by the insurer
18 have been effective;

19 (3) a system of reports, at least as
20 frequent as monthly, to the insurer's management, that
21 include:

22 (A) a description of each derivative
23 transaction entered into, outstanding, or closed out
24 during the period since the last report;

25 (B) the purpose of each outstanding
26 derivative transaction;

27 (C) a performance review of the
28 derivative instrument program; and

29 (D) the counterparty exposure amount
30 for over-the-counter derivative transactions;

31 (4) written authorizations that identify
32 the responsibilities and limitations of authority of
33 persons authorized to effect and maintain derivative
34 transactions; and

35 (5) appropriate documentation for each
36 transaction, including:

37 (A) the purpose of the transaction;

38 (B) the assets or liabilities to
39 which the transaction relates;

40 (C) the specific derivative
41 instrument used in the transaction;

42 (D) for over-the-counter derivative
43 instrument transactions, the name of the counterparty
44 and the counterparty exposure amount; and

45 (E) for exchange-traded derivative
46 instruments, the name of the exchange and the name of
47 the firm that handled the transaction.

48 Revisor's Note

49 Section 2(c)(5)(D), V.T.I.C. Article 2.10-4,
50 refers to "over-the-counter derivative instrument
51 transactions." For consistent use of the terminology,
52 the revised law substitutes "over-the-counter
53 derivative transaction" for "over-the-counter
54 derivative instrument transactions."

Revised Law

Sec. 424.207. ABILITY TO DEMONSTRATE HEDGING CHARACTERISTICS AND EFFECTIVENESS. An insurer must be able to demonstrate to the commissioner on request the intended hedging characteristics and continuing effectiveness of a derivative transaction or combination of transactions through:

- (1) cash flow testing;
- (2) duration analysis; or
- (3) other appropriate analysis. (V.T.I.C. Art. 2.10-4, Sec. 2(d).)

Source Law

(d) The insurer must be able to demonstrate to the commissioner, on request, the intended hedging characteristics and ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing, duration analysis, or any other appropriate analysis.

Revised Law

Sec. 424.208. OFFSETTING TRANSACTIONS. (a) Subject to this section, an insurer may purchase or sell one or more derivative instruments to wholly or partly offset a derivative instrument previously purchased or sold, without regard to the quantitative limitations of this subchapter.

(b) An offsetting transaction under this section must use the same type of derivative instrument as the derivative instrument being offset. (V.T.I.C. Art. 2.10-4, Sec. 2(f).)

Source Law

(f) An insurer may purchase or sell one or more derivative instruments to offset, in whole or in part, a derivative instrument previously purchased or sold without regard to the quantitative limitations of this article if the offsetting transaction uses the same type of derivative instrument as the derivative instrument being offset.

Revised Law

Sec. 424.209. INCLUSION OF COUNTERPARTY EXPOSURE AMOUNTS.
The insurer shall include all counterparty exposure amounts in
determining compliance with the limitations of this subchapter.
(V.T.I.C. Art. 2.10-4, Sec. 2(e).)

1 financial condition from occurring.

2 Revised Law

3 Sec. 424.211. AUTHORITY TO ENTER INTO HEDGING TRANSACTION.

4 After providing notice under Section 424.210, an insurer may enter
5 into a hedging transaction under this subchapter if as a result of
6 and after making the transaction:

7 (1) the aggregate statement value of all outstanding
8 caps, floors, options, swaptions, and warrants not attached to
9 another financial instrument purchased by the insurer under this
10 subchapter, other than a collar, does not exceed 7.5 percent of the
11 insurer's assets;

12 (2) the aggregate statement value of all outstanding
13 caps, floors, options, swaptions, and warrants written by the
14 insurer under this subchapter, other than a collar, does not exceed
15 three percent of the insurer's assets; and

16 (3) the aggregate potential exposure of all
17 outstanding collars, forwards, futures, and swaps entered into or
18 acquired by the insurer under this subchapter does not exceed 6.5
19 percent of the insurer's assets. (V.T.I.C. Art. 2.10-4, Sec.
20 3(c).)

21 Source Law

22 (c) After the notice under Subsection (a) or
23 (b), the insurer may enter into hedging transactions
24 under this article, if as a result of and after giving
25 effect to each hedging transaction:

26 (1) the aggregate statement value of all
27 outstanding options, caps, floors, swaptions, and
28 warrants that are not attached to another financial
29 instrument purchased by the insurer, but not including
30 collars, under this article does not exceed seven and
31 one-half percent of the insurer's assets;

32 (2) the aggregate statement value of all
33 outstanding options, swaptions, warrants, caps, and
34 floors, but not including collars, written by the
35 insurer under this article does not exceed three
36 percent of the insurer's assets; and

37 (3) the aggregate potential exposure of
38 all outstanding collars, swaps, forwards, and futures
39 entered into or acquired by the insurer under this
40 article does not exceed six and one-half percent of the
41 insurer's assets.

42 Revisor's Note

43 Section 3(c), V.T.I.C. Article 2.10-4, refers to
44 providing notice under "Subsection (a) or (b)." The

1 revised law omits the reference to Subsection (b)
2 because that provision is omitted from this revision
3 for the reason stated in the revisor's note to the end
4 of this subchapter.

5 Revised Law

6 Sec. 424.212. AUTHORITY TO ENTER INTO INCOME GENERATION
7 TRANSACTION. An insurer may enter into an income generation
8 transaction only if:

9 (1) as a result of and after making the transaction,
10 the sum of the following amounts does not exceed 10 percent of the
11 insurer's assets:

12 (A) the aggregate statement value of admitted
13 assets that at the time of the transaction are subject to call or
14 that generate the cash flows for payments the insurer is required to
15 make under caps and floors sold by the insurer and that at the time
16 of the transaction are outstanding under this subchapter;

17 (B) the statement value of admitted assets
18 underlying derivative instruments that at the time of the
19 transaction are subject to calls sold by the insurer and
20 outstanding under this subchapter; and

21 (C) the purchase price of assets subject to puts
22 that at the time of the transaction are outstanding under this
23 subchapter; and

24 (2) the transaction is a sale of:

25 (A) a call option on assets that meets the
26 requirements of Section 424.213;

27 (B) a put option on assets that meets the
28 requirements of Section 424.214;

29 (C) a call option on a derivative instrument,
30 including a swaption, that meets the requirements of Section
31 424.215; or

32 (D) a cap or floor that meets the requirements of
33 Section 424.216. (V.T.I.C. Art. 2.10-4, Secs. 4(a), (b), (c).)

1 (2) have the ability to hold the underlying assets in
2 the insurer's portfolio.

3 (b) If during the entire period the put option is
4 outstanding the total market value of all put options sold by the
5 insurer exceeds two percent of the insurer's assets, the insurer
6 shall set aside, under a custodial or escrow agreement, cash or cash
7 equivalents that have a market value equal to the amount of the
8 insurer's put option obligations in excess of two percent of the
9 insurer's assets. (V.T.I.C. Art. 2.10-4, Sec. 4(e).)

10 Source Law

11 (e) If the transaction is a sale of a put option
12 on assets, the insurer must hold sufficient cash, cash
13 equivalents, or interests in a short-term investment
14 pool to be able to purchase the underlying assets on
15 exercise of the option during the entire period that
16 the option is outstanding, and must be able to hold the
17 underlying assets in the insurer's portfolio. If the
18 total market value of all put options sold by the
19 insurer exceeds two percent of the insurer's assets,
20 the insurer shall set aside, under a custodial or
21 escrow agreement, cash or cash equivalents that have a
22 market value equal to the amount of the insurer's put
23 option obligations in excess of two percent of the
24 insurer's assets during the entire period the option is
25 outstanding.

26 Revised Law

27 Sec. 424.215. LIMITATION ON SALE OF CALL OPTION ON
28 DERIVATIVE INSTRUMENT. If an income generation transaction is a
29 sale of a call option on a derivative instrument, including a
30 swaption, the insurer must:

31 (1) during the entire period the call option is
32 outstanding, hold, or have a currently exercisable right to
33 acquire, assets generating the cash flow necessary to make any
34 payment for which the insurer is liable under the underlying
35 derivative instrument; and

36 (2) have the ability to enter into the underlying
37 derivative transaction for the insurer's portfolio. (V.T.I.C. Art.
38 2.10-4, Sec. 4(f).)

39 Source Law

40 (f) If the transaction is a sale of a call option
41 on a derivative instrument, including a swaption, the
42 insurer must hold or have a currently exercisable

1 right to acquire assets generating the cash flow
2 necessary to make any payments for which the insurer is
3 liable under the underlying derivative instrument
4 during the entire period that the call option is
5 outstanding, and must be able to enter into the
6 underlying derivative transaction for the insurer's
7 portfolio.

8 Revised Law

9 Sec. 424.216. LIMITATION ON SALE OF CAP OR FLOOR. If an
10 income generation transaction is a sale of a cap or a floor, the
11 insurer must, during the entire period the cap or floor is
12 outstanding, hold, or have a currently exercisable right to
13 acquire, assets generating the cash flow necessary to make any
14 payment for which the insurer is liable under the cap or floor.
15 (V.T.I.C. Art. 2.10-4, Sec. 4(g).)

16 Source Law

17 (g) If the transaction is a sale of a cap or a
18 floor, the insurer must hold or have a currently
19 exercisable right to acquire assets generating the
20 cash flow necessary to make any payments for which the
21 insurer is liable under the cap or floor during the
22 entire period that the cap or floor is outstanding.

23 Revised Law

24 Sec. 424.217. AUTHORITY TO ENTER REPLICATION
25 TRANSACTION. (a) An insurer may enter into a replication
26 transaction only with the prior written approval of the
27 commissioner.

28 (b) To be eligible for approval by the commissioner:

29 (1) the insurer must be otherwise authorized to invest
30 the insurer's funds under this chapter in the asset being
31 replicated; and

32 (2) the asset being replicated must be subject to all
33 the provisions of this subchapter relating to the making of the
34 transaction by the insurer with respect to that kind of asset as if
35 the transaction constituted a direct investment by the insurer in
36 the replicated asset.

37 (c) The commissioner may adopt rules regarding replication
38 transactions as necessary to implement this section. (V.T.I.C.
39 Art. 2.10-4, Sec. 5.)

Source Law

Sec. 5. (a) An insurer may enter into a replication transaction only with the prior written approval of the commissioner. To be eligible for approval by the commissioner:

(1) the insurer must be otherwise authorized to invest its funds under this chapter in the asset being replicated; and

(2) the asset being replicated must be subject to all the provisions and limitations on the making of the transaction specified by this article relating to investments by the insurer as if the transaction constituted a direct investment by the insurer in the replicated asset.

(b) The commissioner may adopt rules regarding replication transactions as necessary to implement this section.

Revisor's Note

(1) Section 5(a)(1), V.T.I.C. Article 2.10-4, refers to an insurer authorized to invest its funds under "this chapter," meaning V.T.I.C. Chapter 2. Chapter 2 is revised in various places throughout this code. The parts of that chapter that authorize an insurer to invest its funds are revised in this chapter. The revised law is drafted accordingly.

(2) Section 5(a)(2), V.T.I.C. Article 2.10-4, refers to certain "provisions and limitations" of that article. The revised law omits the reference to "limitations" as unnecessary because the meaning of that term is included within the meaning of "provisions."

Revised Law

Sec. 424.218. RULES. The commissioner may adopt rules consistent with this subchapter that prescribe reasonable limits, standards, and guidelines for:

(1) the risk control transactions authorized under this subchapter; and

(2) plans related to those transactions. (V.T.I.C. Art. 2.10-4, Sec. 7.)

Source Law

Sec. 7. The commissioner may adopt rules consistent with this article that prescribe reasonable

limits, standards, and guidelines with respect to the risk-limiting transactions authorized under this article and plans related to those transactions.

Revisor's Note

Section 7, V.T.I.C. Article 2.10-4, refers to "risk-limiting transactions" authorized under this subchapter. To be consistent with the terminology used in other provisions revised in this subchapter, the revised law substitutes a reference to "risk control transactions."

Revisor's Note
(End of Subchapter)

Section 3(b), V.T.I.C. Article 2.10-4, requires certain insurers to send notice to the commissioner of insurance by a date that has now passed. Consequently, the revised law omits the requirement as executed. The omitted law reads:

(b) An insurer engaged in hedging transactions on September 1, 1999, shall send to the commissioner a notice containing the statements required by Subsection (a) of this section not later than October 1, 1999.

CHAPTER 425. RESERVES AND INVESTMENTS FOR LIFE INSURANCE

COMPANIES AND RELATED ENTITIES

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